APPEALS UNDER GST (Covering GSTAT)

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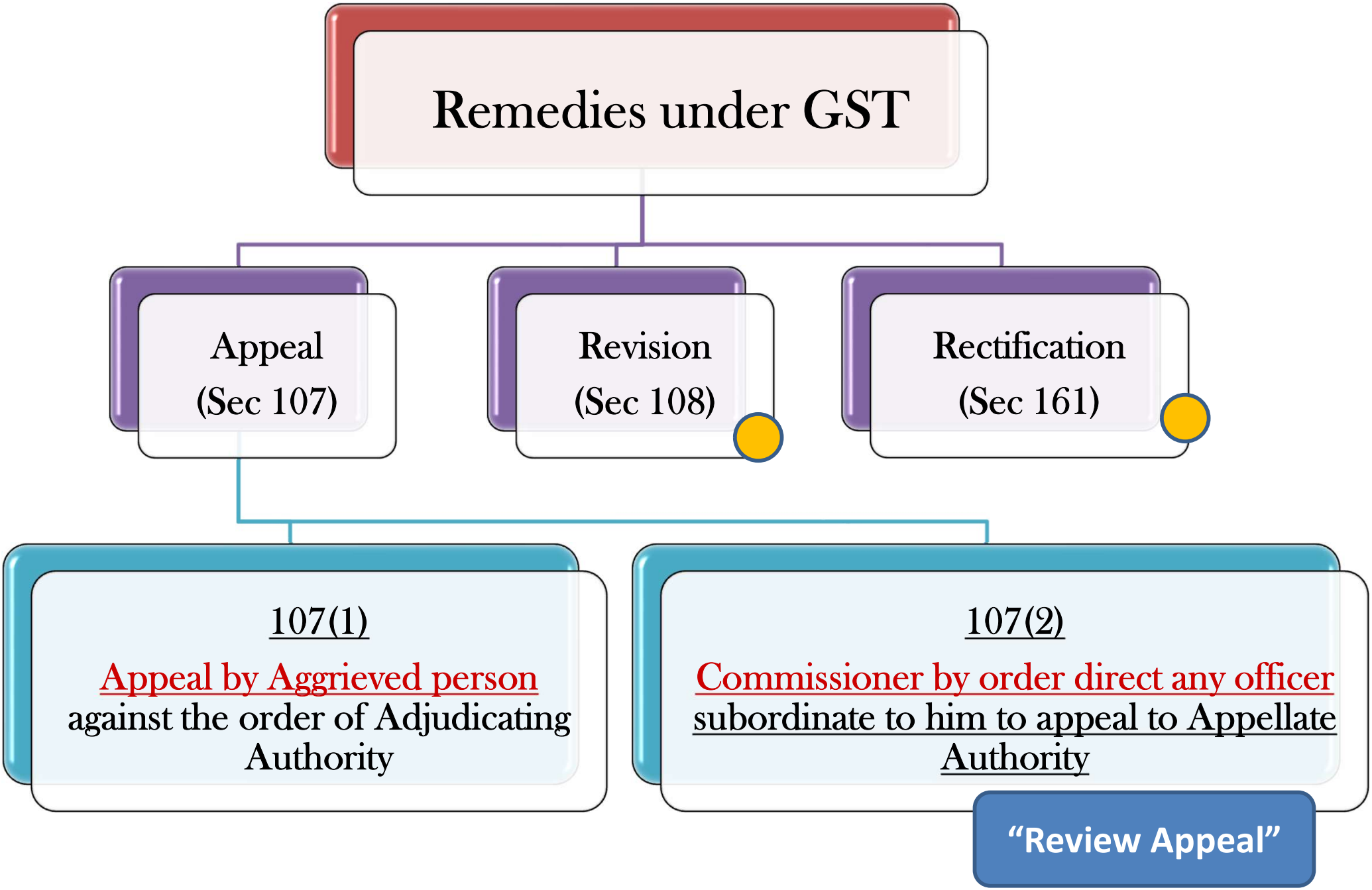
CHAPTER XVII SEC 107-121	CHAPTER XII RULES 108-116
SEC 107 - APPEAL	RULE 108 & 109 – MANNER OF APPEAL TO APPEALLATE AUTHORITY
SEC 108 - REVISION	RULE 109A – APPOINTMENT OF APPEALLATE AUTHORITY
SEC 109 - APPELLATE TRIBUNAL AND ITS BENCHES	RULE 109B - NOTICE TO PERSON AND ORDER OF REVISONARY AUTHORITY
SEC 110- PRESIDENT AND MEMBERS OF APPELLATE TRIBUNAL	RULE 109C-Withdrawal of Appeal
SEC 111- PROCEDURE BEFORE APPELLATE TRIBUNAL	RULE 110 – MANNER OF APPEAL TO APPELLATE TRIBUNAL
SEC 112- APPEAL TO APPELLATE TRIBUNAL	RULE 111- APPLICATION TO APPEALLATE TRIBUNAL
SEC 113- ORDER OF APPELLATE TRIBUNAL	RULE 112- ADDITIONAL EVEIDENCE
SEC 114- FINANCIAL AND ADMINISTRATIVE POWERS OF PRESIDENT	RULE 113- ORDER OF APPEALLATE AUTHORITY OR TRIBUNAL
SEC 115- INTEREST ON REFUND ON PRE DEPOSIT	RULE 114- MANNER OF APPEAL TO HIGH COURT
SEC 116- AUTHORISED REPRESENTATIVE	RULE 115- DEMAND CONFIRMED BY COURT
SEC 117- APPEAL TO HIGH COURT	RULE 116- DISQUALIFICATION FOR MISCONDUCT OF AN AUTHORISED REPRESENTATIVE
SEC 118- APPEAL TO SUPREME COURT	
SEC 119- SUMS DUE TO BE PAID NOTWITHSTANDING APPEAL	
SEC 120- APPEAL NOT TO BE FILED IN CERTAIN CASES	
SEC 121- NON APPEALABLE ORDERS	


Remedies under GST
Appeal
(Sec 107)
Revision
(Sec 108)
Rectification
(Sec 161)
107(1)
Appeal by Aggrieved person against the order of Adjudicating Authority
107(2)
Commissioner by order direct any officer subordinate to him to appeal to Appellate Authority
"Review Appeal"

Important Definitions

Adjudicating Authority – Sec2(4) of CGST Act, 2017

-amended as per the Finance (No.2) Act,2019

Means any authority appointed or authorized to pass any order or decision under this act but **does not include :**

- Central Board of Indirect Taxes and Customs
- Revisional Authority
- Authority for Advance Ruling
- National Appellate Authority for Advance Ruling *
- Appellate Authority for Advance Ruling
- Appellate Authority
- Appellate Tribunal
- Anti-Profiteering Authority u/s 171(2)

*Date yet to be notified

Section 2(8) Appellate authority

“Appellate Authority" means an authority appointed or authorised to hear appeals as referred to in section 107

Section 2(99) Revisional Authority

"Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in section 108

Section 2(9) Appellate Tribunal

“Appellate Tribunal" means the Goods and Services Tax Appellate Tribunal constituted under section 109

APPEAL

Not defined in the act

"An Appeal under any law is an application to a higher court for a reversal of the decision of a court. Appeals arise when there are any legal disputes.

Disputes arise due to non-compliance of taxpayer with the provisions under law.

ADJUDICATION ORDER

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 as **Adjudication order.**

SEC 116

Appearance by authorised representative

RIGHT TO APPEAL ⟶ Appeal is a creature of statute.

~~**INHERENT RIGHT.**~~

IF not given by statute ⟶ **Cannot Be Implicated**

Anant Mills Ltd. v/s State of Gujrat.
AIR 1975SC1234

IF given by law ⟶ **cannot be denied**

State of Maharashtra v/s Mahboob S. Allibhoy
1996 (85) ELT 22 (SC).

SEC 121- Non-appealable decisions and orders -relating to any of the following matters

- an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer
- an order pertaining to the seizure or retention of books of account, register and other documents
- an order sanctioning prosecution under this Act
- an order passed under section 80 relating to payment of tax or interest etc in installments

ASMT orders e.g ASMT 13 (BJA) order are Appealable Orders

Section 120

Appeal not to be filed in certain cases

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.

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

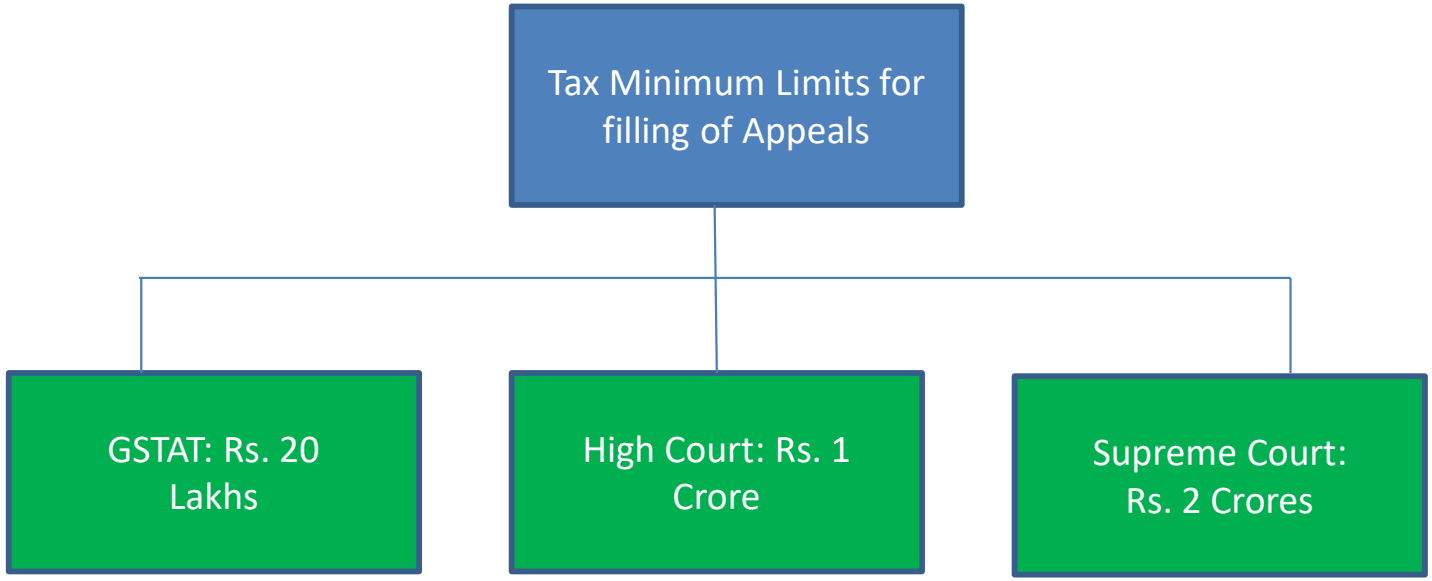
3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced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

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).

Circular No. 207/1/2024-GST

Dated the 26thJune 2024

DEPT CAN LITIGATE ONLY IF AMOUNT IS ABOVE CERTAIN THRESHOLD



HOW THE THRESHOLD WILL BE DECIDED ?

Demand of Tax + Interest + penalty -**Only Tax to be considered**

Demand of Interest only - **Interest** to be considered

Demand of Penalty only - **Penalty** to be considered

Demand of Late Fees Only – **Late fee** to be considered

Demand of Interest + Penalty + Late Fees – **Aggregate of Interest + Penalty & Late Fees to be considered**

Demand of Erroneous Refund – **Only Refund** amount to be considered

Composite order for more than one demand – **consolidated demand** to be considered for limit

IN WHICH CASES THRESHOLD IS NOT APPLICABLE ?

Where any provision has been ultra vires to the constitution of India

Where any rules or regulations: say (CGST Rule) have been held to be ultra vires the parent Act (say CGST Act):

Where any order, notification, instruction, or circular has been held ultra vires of the Act

Where a matter is related to :-

1. Valuation of Goods and services or
2. Classification of Goods or services or
3. Refunds or
4. Place of Supply

Where strictures/adverse comment6s hacve been passed and/or cost has been imposed against the Govt /Deptt or their Officers

F. No. 390 Misc/30/ 20231C Dated 02-11-2023

NEW MONETARY LIMITS FOR FILLING APPEALS BY THE DEPARTMENT IN THE MENTIONED FORUMS BY THE CENTRAL BOARD OF THE INDIRECT TAXES & CUSTOMS
(IN LEGACY OF CENTRAL EXCISE AND SERVICE TAX) :

SUPREME COURT: Rs. 2 Crore

HIGH COURT: Rs. 1 Cr

CESTAT : Rs. 50 Lakh

EXCEPTIONS TO THE ABOVE MENTIONED LIMITS:

Adverse judgments related to certain issues must be contested regardless of the amount involved. These include cases where:

- The constitutional validity of the provisions of an Act or Rule is challenged
- A Notification, Instruction, Order, or Circular has been declared illegal or ultra vires.
- Classification and refund issues of legal or recurring nature are at stake.

For pending cases within the revised limits, the withdrawal process will follow the current practice established for cases from the Supreme Court, High Courts, and CESTAT.

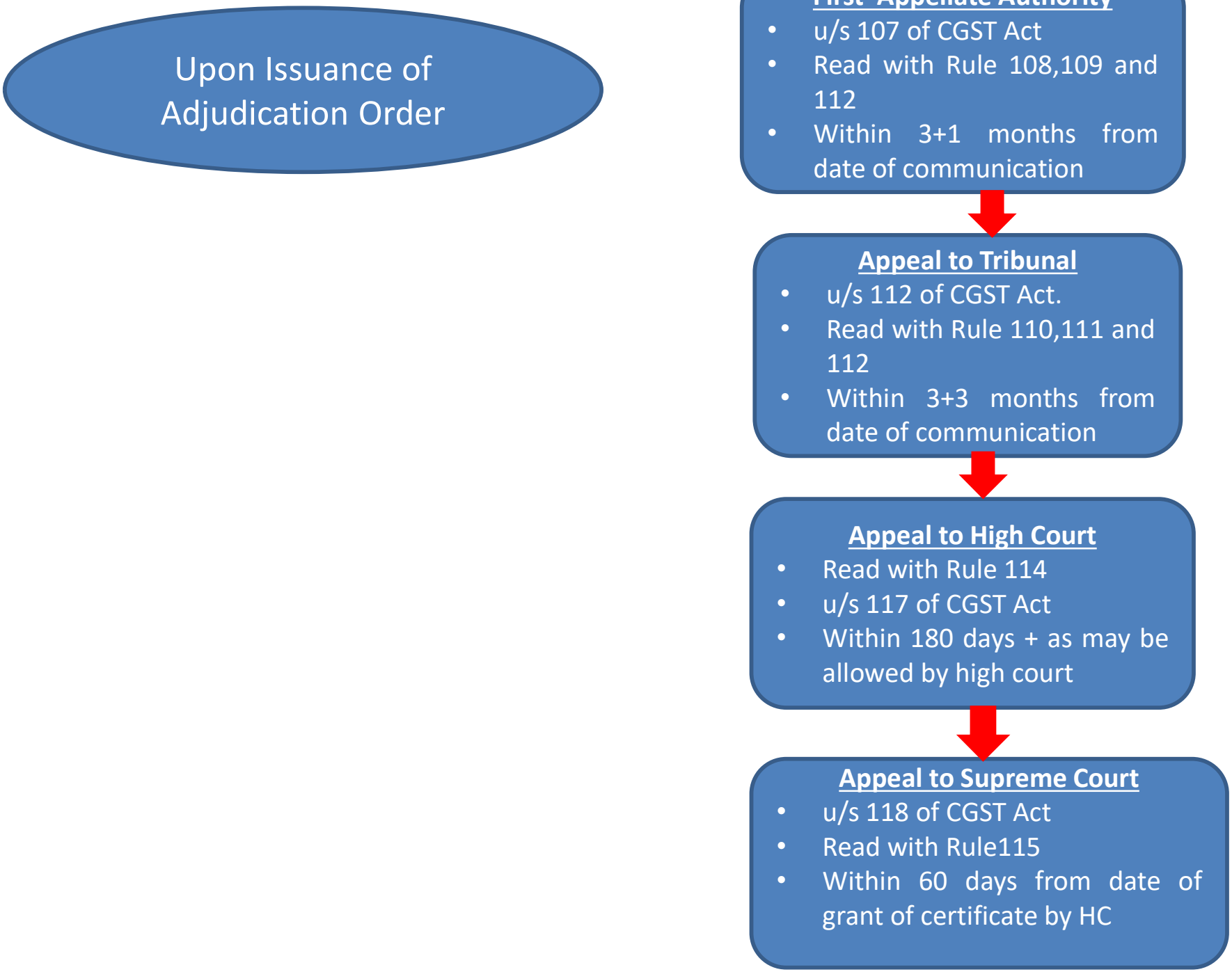
Illustrative list of orders under GST

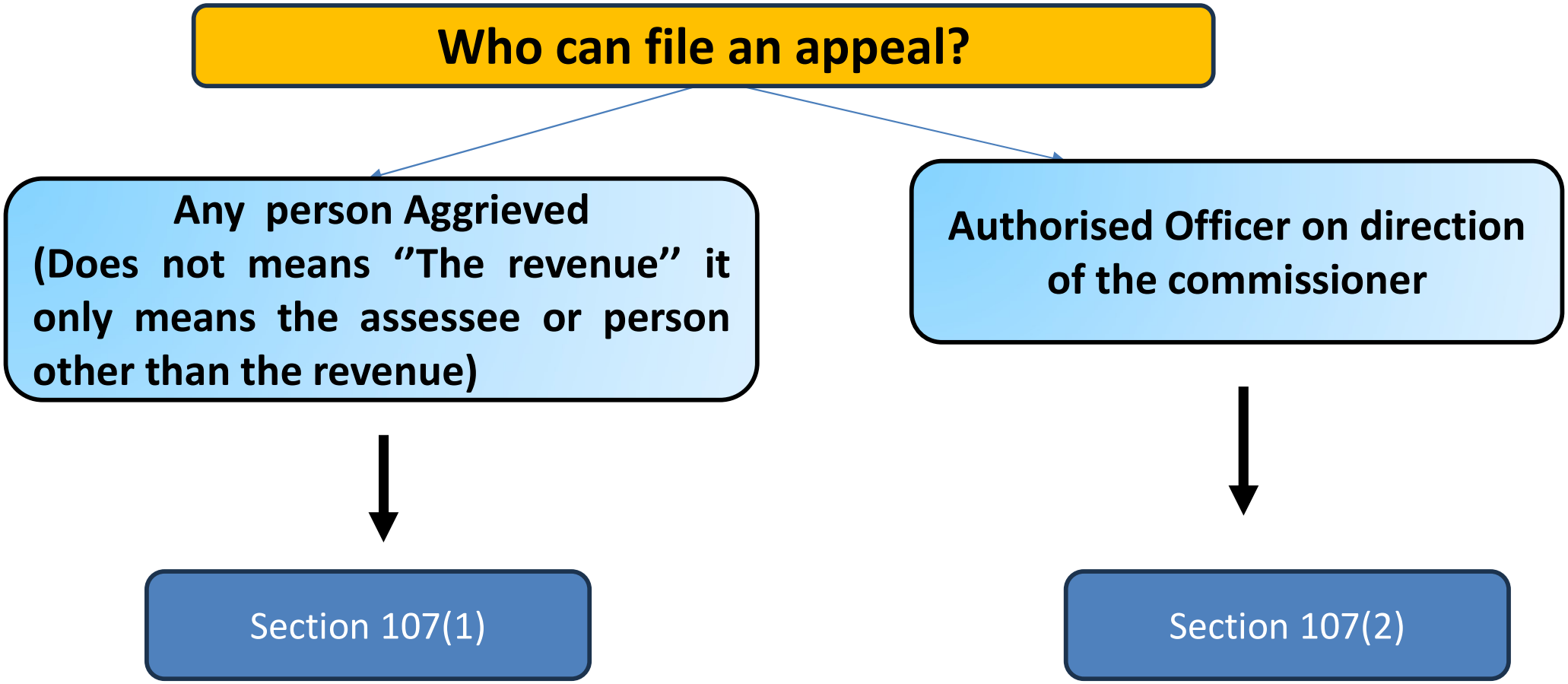
- Cancelation of registration
- Tax Not paid, short paid, input tax wrongly availed under section 73 without willful misstatement of facts or fraud
- Tax Not paid, short paid, input tax wrongly availed under section 74 with willful misstatement of facts or fraud
- Order of refund
- Rejection of LUT
- Order of provisional assessment, reassessment, summary assessment
- Rectification of Demand Order
- Demand Order imposing penalty u/s 125
- Order Issued Against Non-fillers of return.

Are the following orders?

- Notice
- Summons
- Audit Memos

In Commissioner of Central Excise,Haldia v. Krishna Wax (P.) Ltd. (2020) 77 GST 562 (SC). The Supreme Court held that an **internal order is not a decision or determination** and hence can not be appealed against an order or decision in general parlance refers to any which effects right and liabilities issued by the department.


Upon Issuance of Adjudication Order
First Appellate Authority
u/s 107 of CGST Act
Read with Rule 108,109 and 112
Within 3+1 months from date of communication
Appeal to Tribunal
u/s 112 of CGST Act.
Read with Rule 110,111 and 112
Within 3+3 months from date of communication
Appeal to High Court
Read with Rule 114
u/s 117 of CGST Act
Within 180 days + as may be allowed by high court
Appeal to Supreme Court
u/s 118 of CGST Act
Read with Rule115
Within 60 days from date of grant of certificate by HC


Who can file an appeal?
Any person Aggrieved
(Does not means "The revenue" it only means the assessee or person other than the revenue)
Authorised Officer on direction of the commissioner
Section 107(1)
Section 107(2)

Sec 107(1)

Appeal by Aggrieved person
against the order of Adjudicating Authority

Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such **Appellate Authority as may be prescribed** within three months from the date on which the said decision or order is communicated to such person.

RULE 108

Aggrieved Person

- Meaning of 'person Aggrieved'
  - "Aggrieved" means one whose pecuniary interest is directly affected by the adjudication, one whose right of property may be established or divested thereby."

    ['Advanced Law Lexicon]
  - Appeal – person aggrieved and locus-standi –Direct Legal Interest- Person aggrieved is wider than party aggrieved (Northern Plastics Ltd. vs. Hindustan Photo Films Mfg. Co. Ltd. , 1997(91) ELT 502(SC) e.g In Custom person claiming goods confiscated other than on whose name goods are confiscated, is person aggrieved

    Mahindra and Mahindra Ltd. vs. CCE -1983(13) ELT 974 (Tribunal) –Who being customer ,ultimately bears the burden cannot be said to be directly effected.

    Associations on behalf of members cannot be person aggrieved

Illustrations:
A person may feel aggrieved in cases like
DENIAL OF EXEMPTION
IMPOSITION OF PENALTY
ITC DISALLOWED

Rule 108 Appeal to the Appellate Authority

(1) An appeal to the Appellate Authority ***under sub-section (1) of section 107*** *shall be filed in* ***FORM GST APL-01****, along with the relevant documents, electronically and a provisional acknowledgement shall be issued to the appellant immediately.*

Provided that an appeal to the Appellate Authority may be filed manually in FORM GST APL-01, along with the relevant documents, only if-

(i)The Commissioner has so notified, or

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

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

(proviso inserted w.e.f. 04.08.2023 NOTIFICATION NO. 38/2023- Central Tax dated 04-08-2023)

(2) *The grounds of appeal and the form of verification as contained in* ***FORM GST APL-01*** *shall be signed in the manner specified in rule 26.*

(3) ……

Explanation.—*For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.*

NOTIFICATION No. 26/2022- CENTRAL TAX

Dated: 26th December,2022

Rule 108

Appeal to the Appellate Authority

RULE 108(3) SUBSTITUTED

OLD

A certified copy of the decision or order appealed against shall be **submitted within 7 days of filing the appeal** under Rule 108(1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf

Provided that where the certified copy of the decision or order is submitted within 7 days from the date of filing the **FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement** and where the said copy is submitted after 7 days,

Date of filing of the appeal shall be the date of the submission of such copy.

NEW

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

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

Date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal

Provided further where the self certified copy of decision not submitted within 7 days , the date submission consider as date of filing appeal

OLD

COPY of Decision or Order appealed against	Date of filling of appeal
Certified Copy submitted **within** 7 days of filling Form GST APL-01	Date of issue of Provisional Acknowledgement
Certified Copy submitted **after** 7 days of filling Form GST APL-01	Date of submission of certified copy

NEW

Decision or Order uploaded on the portal

a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal

Decision or Order NOT uploaded on the portal

COPY of Decision or Order appealed against	Date of filling of appeal
Self - Certified Copy submitted **within** 7 days of filling Form GST APL-01	Date of issue of Provisional Acknowledgement
Self Certified Copy submitted **after** 7 days of filling Form GST APL-01	Date of submission of Self certified copy

w.e.f. 04.08.2023 NOTIFICATION NO. 38/2023- Central Tax dated 04-08-2023

RULE 108

EARLIER

108(1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, **either electronically or otherwise as may be notified by the Commissioner** and a provisional acknowledgement shall be issued to the appellant immediately:

NOW

108(1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in FORM GST APL-01, along with the relevant documents, ***electronically*** and a provisional acknowledgement shall be issued to the appellant immediately:

Optum Global Solutions (India) (P.) Ltd. *v.* State of Haryana [2024] 158 taxmann.com 20 (Punjab & Haryana) HIGH COURT OF PUNJAB AND HARYANA

GST : Where appeal was filed manually and, hence, rejected for not being filed electronically, relying on rule 108 of Haryana GST Rules, 2017, appeal was to be restored

Assessee had filed appeal offline/manually against order denying his refund claim - Appeal was rejected for not being filed electronically - Assessee relied on rule 108 of Haryana GST Rules, 2017 which allows for appeals to be filed either electronically or otherwise - HELD : Rule 108, which allowed electronic or 'otherwise' filing, encompasses manual filing as well - Relying on judgment in Ali Cotton Mill v. Appellate Joint Commissioner (ST) [2021] 124 axmann.com 611 (Andhra Pradesh) and instant Court quashed order rejecting appeal - Appeal was to be restored [Section107 of CGST , Rule 108 of CGST Rules, 2017] [Paras 3 and 6] [In favour of assessee]

NON SUBMISSION OF CERTIFIED COPY OF ORDER CONDONED

SR. NO.	Name & Citation	Particulars
1	[2021] 129 taxmann.com 206 (Orissa) HIGH COURT OF ORISSA Shree Jagannath Traders v. Commissioner of State Tax Odisha, Cuttack	GST : Where assessee against an order dated 18-8-2020 filed appeal before Appellate Authority within time on 13-11-2020 electronically accompanied by a downloaded copy of order appealed against and thereafter it submitted a certified copy of order appealed against belatedly on 9-3-2021, i.e., after prescribed period, and Appellate Authority held that a certified copy of order appealed against should be submitted within one week of filing of appeal and dismissed appeal as not having been preferred in time, order of Appellate Authority deserved to be set aside with a direction to decide appeal on merits
2	[2022] 140 taxmann.com 162 (Orissa) HIGH COURT OF ORISSA Atlas Pvc Pipes Ltd. v. State of Odisha	GST : Where petitioner had enclosed copy of impugned order as made available to it in GST portal while filing memo of appeal, non-submission of certified copy, was to be treated as mere technical defect; therefore, its submission should be allowed Appeals to appellate authority - Certified copy of assessment order - - HELD :Since petitioner had enclosed copy of impugned order as made available to it in GST portal while filing memo of appeal, non-submission of certified copy had to be treated as mere technical defect - Assessee was to be allowed to file certified copy as collected [Section 107, read with section 74, of Central Goods and Services Tax Act, 2017/Odisha Goods and Services Tax Act, 2017- Rule 108 of Odisha Goods and Services Tax Rules, 2017 - Section 5 of Limitation Act, 1963 - Article 226 of Constitution of India][Paras 6.11 to 10] [In favour of assessee]

3	**[2021] 127 taxmann.com 786 (Orissa)** **HIGH COURT OF ORISSA** **Shree Udyog v. Commissioner of State Tax Odisha,Cuttack**	**GST : Mere delay in enclosing a certified copy of order appealed against along with appeal should not come in way of petitioner's appeal for being considered on merits by Appellate Authority** **Section 107 of the Central Goods and Services Tax Act, 2017/Section 107 of the Odisha Goods and Services Tax Act, 2017, read with rule 108 of the Central Goods and Services Tax Rules, 2017/rule 108 of the Odisha Goods and Services Tax Rules, 2017 - Appellate Authority - Under rule 108(3), appeal had to be accompanied by a certified copy of order appealed against - But petitioner furnished a certified copy of order of appealed against more than three months and 25 days after filing of appeal and Appellate Authority dismissed appeal holding that delay could not be condoned - Petitioner stated that while appeal was accompanied by downloaded printed copy of order appealed against at time of filling of appeal, it was not accompanied by certified copy thereof at that stage, and further considering that a downloaded copy thereof was in fact submitted along with appeal which was otherwise filed within time, mere delay in enclosing a certified copy of order appealed against along with appeal should not come in way of petitioner's appeal for being considered on merits by Appellate Authority - Held, yes - Whether, therefore, impugned order of Appellate Authority rejecting appeal on ground of delay, was to be set aside - Held, yes [Paras 12 & 13]**
4.	**KPMG INDIA PVT. LTD. VERSUS JOINT COMMISSIONER OF STATE TAX (APPEALS) FARIDABAD AND OTHERS 2023 (5) TMI 642 - PUNJAB AND HARYANA HIGH COURT**	**Appeal could not be dismissed as certified copy of order not produced** **Relevant date for filing of appeal - whether, order against which appeal has been filed is not uploaded on common portal, and a self certified copy of the said decision is submitted within 7 days, the said date of submission shall be considered as the date of filing of the appeal? -** HELD THAT:- In the present case, since the uploaded copy was already part of the appeal, it would amount to substantial compliance of Rule 108 of the Haryana Goods and Service Tax Rules, 2017 and the Joint Commissioner would not dismiss the appeal by the impugned order (Annexure P-1) on the ground that the appellant had not submitted the certified copy of the order impugned therein.

LATE SUBMISSION OF APPEAL CONDONED

Sr. No.	Name & Citation	Particulars
1.	[2013] 34 taxmann.com 195 (Ahmedabad - CESTAT) CESTAT, AHMEDABAD BENCH Projects & Development India Ltd. v. Commissioner of Central Excise, Vadodara	Unless there are mala fides attributable to conduct of party, generally, delay should be condoned and matter should be allowed to be contested on merits rather than thrown on such technalities Section 85 of the Finance Act, 1994 - Commissioner (Appeals) - Condonation of delay - There was a delay of 10 days in filing appeal before Commissioner (Appeals) by assessee - Assessee claimed that date of receipt of adjudication order was mentioned as 24-3-2011 by its concerned employee, - HELD : Commissioner (Appeals) had power to condone delay of 10 days and such delay was not condoned only for reason that proper justification was not given - In view of judgment of Supreme Court in Improvement Trust v. Ujagar Singh [Civil Appeal Nos. 2395 & 2397 of 2008, dated 9-6-2010] unless mala fides are writ large on conduct of party, generally as a normal rule, delay should be condoned and an attempt should always be made to allow matter to be contested on merits rather than to throw it on such technalities -

2.	**[2014] 45 taxmann.com 521 (Gauhati) HIGH COURT OF GAUHATI** **Hindustan Unilever Ltd. v. Commissioner of Central Excise**	**By and large, approach of court should not be so technical, but it should be always to ensure that substantial justice is done by giving an opportunity of being heard to both parties; hence, delay in filing appeal must be condoned** **Section 35B of the Central Excise Act, 1944, read with section 86 of the Finance Act, 1994 and section 129A of the Customs Act, 1962 - Appeals - Condonation of delay -** **- HELD : Condoning delay always advances cause of justice and affords opportunity to parties to contest case on merits whereas; not condoning delay results in denial of justice and deprives them of an opportunity - That does not mean that in every case delay should always be condoned, but by and large, approach of court should not be so technical, but it should be always to ensure that substantial justice is done by giving an opportunity of being heard to both parties - Hence, Tribunal should have condoned delay because : (a) delay was of 95 days and (b) ground of delay stated in application was 'sufficient cause' - Accordingly, delay was condoned and matter was remanded to Tribunal**
3	**Marudhar Medical Store v. Assistant Commissioner 2023 (12) TMI 891 - RAJASTHAN HIGH COURT**	The GST registration of petitioner was cancelled and it filed appeal against cancellation of the GST registration. The Appellate Authority dismissed the appeal on the ground that the appeal filed by the petitioner was time barred. It filed writ petition and contended that the appeal was dismissed by the Appellate Authority without considering the grounds of delay submitted by it. **Appeal dismissed on the ground of being time barred - cancellation of the GST registration -** HELD THAT:- This Court in Prakash Purohit's case [2022 (11) TMI 742 - RAJASTHAN HIGH COURT] has observed that in absence of GST registration, a person would not be able to continue with his business and thus, would be deprived of his livelihood which amounts to violation of right to life and liberty as enshrined in Article 21 of the Constitution of India. Therefore, the Court held that the petition deserved to be allowed as petitioner had sufficiently explained reasons for delay in filing appeal. The Court also directed the petitioner to file appeal against the cancellation of GST registration before the competent authority within ten days.

2.	**[2024] 159 taxmann.com 113 (Madras) HIGH COURT OF MADRAS Lansun Logistics v. Commissioner (Appeals-II)***	**Appeals to Commissioner (Appeals) - Period of limitation - Condonation of delay - Adjudicating Authority (Asstt. Commissioner) had granted 3 months' time for filing appeal - Assessee was under wrong impression that time limit available for filing an appeal was 3 months and if there was any delay, same could be filed within another period of 30 days - However, in terms of provisions of Finance Act, 1994, said 3 months' time was inclusive of one month delay period - Assessee got confused over time limit prescribed under statute (which was 2 months) - Reasons assigned by assessee for preferring appeal with delay were genuine and reasonable of Commissioner (Appeals) refusing to entertain appeal since it was not filed within limitation was to be set aside and Appellate Authority was directed to take appeal on record and dispose of same on merits - Section 85 of Finance Act, 1994] [Paras 8 to 9] [In favour of assessee]**

CONDONATION BEYOND ONE MONTH
Section 5 of Limitation Act, 1963

Citation	Particulars
[2024] 162 taxmann.com 635 (Calcutta) **HIGH COURT OF CALCUTTA** **Jalajoga** **v.** **State of WestBengal***	Appeal to Appellate Authority - Limitation - Condonation of delay - Appeal rejected by Appellate Authority on ground of limitation - Whether appellate authority had failed to exercise jurisdiction in rejecting application for condonation of delay on ground that same was filed beyond one month from prescribed period of limitation – HELD **: In absence of a non obstante clause rendering Section 29(2) of Limitation Act, 1960, non-applicable and in absence of a specific exclusion of Section 5 of Limitation Act, 1963**, it would be improper to read implied exclusion thereof, making it so that appellate authority is not denuded of its power to condone delay beyond one month from prescribed period of limitation as provided for in Section 107(4) of CGST Act – Appellate Authority failed to exercise its jurisdiction by not entertaining application for condonation of delay - Consequently, appellate authority's order was set aside, delay was condoned, and appeal was restored - Appellate authority was directed to dispose of appeal on merits, ensuring compliance with necessary formalities, including payment of pre-deposit.
[2024] 162 taxmann.com 552 (Calcutta) **HIGH COURT OF CALCUTTA** **Mukul Islam** **v.** **Assistant Commissioner of Revenue, State Tax***	Appeals to Appellate Authority - Limitation Period - Condonation of delay - Adjudication order was passed against petitioner-assessee by respondent-department under Section 73 - Petitioner filed an appeal against aforesaid order - Appeal was rejected on ground that appeal was filed beyond limitation period - Writ petition had been filed challenging refusal on part of appellate authority to condone delay in maintaining appeal under Section 107 – Held**: As per numerous precedents, it was concluded that appellate authority is not denude of its power to condone delay beyond one month from prescribed period of limitation as provided in Section 107 (4)** - Therefore, appellate authority had failed to exercise jurisdiction in refusing to consider application for condonation of delay in its proper perspective - Therefore, order passed by Appellate Authority in rejecting appeal on ground of delay was set aside
[2023] 148 taxmann.com 112 (Calcutta) **HIGH COURT OF CALCUTTA** **Kajal Dutta** **v.** **Assistant Commissioner of State Tax***	Appeal to Appellate Authority - Limitation period - Condonation of delay - Appeal was not filed within prescribed period on account of illness for which doctor's certificate was enclosed - Although time limit for preferring appeal beyond period of three months is 30 days, statute does not state that beyond said date, appellate authority cannot exercise jurisdiction - While exercising jurisdiction under Article 226 of Constitution of India instant Court can examine factual circumstances and grant appropriate relief, appellate remedy being a very valuable remedy - Therefore, **delay in filing appeal before appellate authority was to be condoned** and appellate authority should consider and decide appeal on merits

Citation	Particulars
[2024] 159 taxmann.com 259 (Calcutta) **HIGH COURT OF CALCUTTA** **S.K.Chakraborty & Sons** **v.** **Union of India**	Appeal to Appellate Authority - Limitation - Condonation of delay - Appeal rejected by Appellate Authority on the ground of limitation - Whether provisions of Limitation Act, 1963 are attracted to period prescribed for filing period under Section 107 of CGST Act, 2017 – HELD : Prescription of period of limitation by a special statute may or may not exclude applicability of Limitation Act, 1963 - In the present case, provisions of Limitation Act 1963 particularly Section 29(2) should be considered - Since provisions of Section 5 of Limitation Act have not been excluded expressly or impliedly by Section 107 of CGST Act, 2017 by virtue of Section 29 of Limitation Act, Section 5 of Limitation Act, 1963 stands attracted - Period for filing appeal can be extended based on facts and circumstances by Appellate Authority - Appellate Authority directed to decide application for condonation of delay on merits
[2024] 161 taxmann.com 300 (Madras) **HIGH COURT OF MADRAS** **Tvl. SriGokulStores** **v.** **Deputy Commissioner (ST)***	Appeals to appellate authority – Limitation – Inadvertent error in GSTR 3B return - Pursuant to proceedings relating to availment of ITC by assessee, an order was issued - Assessee filed appeal against same by remitting 10% of disputed tax demand, which was rejected on ground of limitation - Assessee referred to it's GSTR 3B return for October, 2019 and submitted that assessee inadvertently committed an error by entering eligible ITC details pertaining to "inward supplies liable to reverse charge" instead at "all other ITC" – It was contended that entire tax liability had arisen on account of this inadvertent error – HELD : An assessment order was issued on 9-9-2023 and period of limitation, without condonation, expired in early December, 2023 – Thirty days period for condonation expired in early January, 2024 and appeal was filed shortly thereafter – Therefore, impugned order was to be set aside and appellate authority was to be directed to receive and dispose of appeal on merits.

AA POWER TO CONDONE ONLY ONE MONTH

1.	[2020] 119 taxmann.com 116 (Orissa) HIGH COURT OF ORISSA Debabrata Mishra v. Commissioner of Central Tax and GST	Where Competent Authority cancelled registration certificate of assessee and appeal filed against impugned order was dismissed by Appellate Authority on ground of delay, assessee was to be permitted to file representation before Commissioner for restoration/reissuance/issuance of registration certificate Section 29, read with section 107, of the Central Goods and Services Tax Act, 2017/Section 29, read with section 107, of the Odisha Goods and Services Tax Act, 2017 - Registration - Cancellation of - Competent Authority vide order dated 27-3-2019 cancelled registration certificate of assessee - Against impugned order, assessee filed appeal before Appellate Authority under section 107 beyond limitation of four months - Appellate Authority dismissed appeal on ground of delay - Assessee filed writ petition seeking relief in this regard - Whether when Statute clearly provided about limitation that appeal against cancellation of registration certificate was to be filed within a period of three months under section 107 and if appeal was not filed within that period, Appellate Authority had necessary jurisdiction to condone delay of one month at best; thereafter, High Court could not issue directions to Appellate Authority to entertain appeal of assessee - Held, yes - Whether assessee was to be permitted to file a detailed representation, if so advised, before Commissioner for restoration/reissuance/issuance of registration certificate - Who would dispose of representation filed by assessee taking a liberal view

HC allows filing of GST Appeal condoning the period of limitation

Manjeet Cotton Ltd. V. Commissioner Of State Tax Citation: R/Special Civil Application NO. 16857 Of 2022 Court: Gujarat High Court Date: 15-Dec-2022

- The Hon'ble Gujarat High Court condoned the delay of period of limitation to file appeal before the Appellate Authority by the assessee. Held that, assessee has the right to challenge the assessment order by appealing to the Appellate Authority, and such right should be exercised to maintain the possibility of addressing a larger issue.
- If there is actual delay which is beyond condonable period, HC itself can condone delay, if it is satisfied with the reasons for delay, but can't ask other authority to do it.
- Adjudication order passed ex parte could not be faulted when Adjudicating Authority conceded to assesse's request for adjournment and fixed a date for personal hearing but they did not respond; however, assesse was left free to appeal against assessment.

Condonation of delay by appellate authority S. 107(4) CGST Act

- **Authorities created by statute cannot apply limitation Act, 1963. They cannot condone delay unless empowered by statute- Om Parkash v. Ashwini Kumar Bassi (2010) 258 ELT 5(SC)**
- M.P. Steel Corporation v. commissioner of Central Excise [2015] 319 ELT 373 (SC) (A.K.SIKRI AND ROHINTON FALI NARIMAN, JJ.)
- Provisions of limitation Act do not apply to Tribunal, Other quasi-judicial authorities; but principles there in may be extended to proceedings before Tribunal and other quasi-judicial authorities so as to advance cause of justice.
- Time spent in pursuing remedy before wrong forum bona fide would stand excluded but period prior to institution of initiation of any abortive preceeding cannot be excluded which is principle which has been derived from section 14 of the limitation act.

If appeal was not filed with in time limit but delay were genuine and reasonable can limitations period would apply?

1. The Hon'ble Madras High Court in the case of Great Heights Developers LLP V/s. Additional Commissioner Office of the Commissioner Of CGST & Central Excise Date of Judgement 01-02-2024

- The petitioner challenges order in original dated 14.08.2023 imposed U/S 73 and such was received by him on 16.08.23
- Accordingly the appeal should have been filed in 3 months with further period of 1 month which petitioner could not file in time as he was diagnosed with septic shock and the period for filling appeal with an application to condone delay expired.
- Under Section 107 of the CGST Act, the Appellate Authority does not have the power to condone delay **beyond 1 additional month** but the petitioner has provided cogent reasons to explain such delay.
- Therefore, High Court held that recognized assessee's **medical condition as valid reason** for condoning delay. **Appellate Authority must receive and consider assessee's appeal** on its merits, even though it was filed late. Provided appeal is filed within **10 days.**

2. THE Hon'ble Madras HIGH COURT in the case of LANSUN LOGISTICS V/s COMMISSIONER (APPEALS-II), OFFICE OF THE COMMISSIONER OF GST & CENTRAL EXCISE (APPEALS-II), decided on 22-12-2023

Where reasons assigned by assessee for delay in filing appeal was genuine and reasonable, order refusing to entertain appeal on ground of limitation was to be set aside and Appellate Authority was to be directed to take appeal on record and dispose same on merits after providing opportunity of personal hearing to assessee

FORM DRC-03 instead of APL -01 for Pre-deposit	
[2024] 159 taxmann.com 514 (Andhra Pradesh) **HIGH COURT OF ANDHRA PRADESH** **Manjunatha Oil Mill v. Assistant Commissioner (ST) (FAC)** **U.DURGA PRASAD RAO AND SMT. KIRANMAYEE MANDAVA, JJ.** **W.P.NOS. 2153, 2177 OF 2024 & OTHS.** **FEBRUARY 2, 2024**	Pre Deposit - Condonation of Delay - Assessee intended to prefer appeals against Assessment Orders **but encountered technical issue**s while making pre-deposit of 10% of demanded tax via prescribed Form APL-01 - Due to technical glitch, assessee made payment through Form GST DRC-03 instead, which was accepted by Web Portal - However, assessee's appeals were rejected on grounds that pre-deposit was made through wrong format - Assessee filed separate applications to condone delay, but Respondent Authority did not mention or consider these delay condoning petitions in impugned orders - Rejection of appeals led to enforcement of assessment orders by attaching assessee's bank accounts - Assessee contended that due to a technical glitch, they were compelled to make pre-deposit through Form GST DRC-03 instead of APL-01, asserting it was not willful act, further contending that their petitions for condoning delay were disregarded by Respondent Authority - HELD : High Court found merit in assessee's contentions regarding non-consideration of his delay condoning petitions by Respondent Authority - High Court acknowledged that whether assessee were forced to use Form GST DRC-03 instead of APL-01 due to technical issues is factual question - Hence, matter was remanded back to Respondent Authority to consider reasons in delay condoning petitions and pass appropriate orders accordingly [Section 107 of Central Goods and Services Tax Act, 2017/Andhra Pradesh Goods and Services Tax Act, 2017] [Para 6 and 7] [In favour of assessee/Matter Remanded]

Voluntary deposit as made under protest by petitioner under provisions of sub-section (5) of section 73 of CGST Act during adjudication cannot be excluded from considering it as part of pre-deposit for filing appeal before appellate authority

NAME	PARTICULARS
Vinod Metal ***v.*** **State of Maharashtra** **[2023] 153 taxmann.com 322 (Bombay)** **HIGH COURT OF BOMBAY**	Appeals to appellate authority - Pre-deposit - Computation of - Petitioner approached High Court alleging that GSTN Portal prevented it from lodging/filing of a statutory appeal under section 107 of CGST Act, in a situation wherein petitioner had intended to take benefit of voluntary deposit of CGST made by it under provisions of sub-section (5) of section 73 so as to treat said amount as pre-deposit for filing appeal – HELD : **An amount deposited under sub-section (5) section 73 of CGST Act is not an amount, which is deposited in pursuance of any demand or any assessment order - It is certainly a voluntary deposit - Such deposit would be accounted in event of any liability of assessee to pay tax, and would be integral to assessment** - Such deposit cannot be excluded from consideration for purpose of compliance as mandated by sub-section (6) of section 107 [Section 107, read with section 73 of Central Goods and Services Tax Act, 2017/Maharashtra Goods and Services Tax Act, 2017] [Paras 9 and 11] [In favour of assessee]

SR.NO.	CASE LAWS	DEALS WITH	MATTER
1.	HIGH COURT OF KARNATAKA Himalaya Drug Co. v/s Commissioner of Central Tax (Appeals-II) Favour	[Section 107 of Central Goods and Services Tax Act,]	Delay in filing appeal was condonable where inability to file within prescribed period was unintentional and due to bona fide reasons, unavoidable circumstances and sufficient cause
2.	SUPREME COURT OF INDIA Assistant Commissioner (CT) LTU V/S GlaxoSmithKline Consumer Health Care Ltd. Against PECULIAR FACTS	Section 107 of the Central Goods and Services Tax Act, 2017	If assessee had chosen to approach High Court filing writ petition after expiry of maximum limitation period of 60 days prescribed for filing appeal against assessment order, High Court could not disregard statutory period for redressal of grievance and entertain writ petition of such a party as a matter of course

HC can condone the Delay under 226 Writ jurisdiction if deemed fit

Sec 107(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 **three months or six months**, as the case may be, allow it to be presented within a **further period of one month.**

Sec 107(5)

Every appeal under this section shall be in such **form** and shall be verified in such **manner as may be prescribed**

Rule 108

Sec 107(6) Pre Deposit –Mandatory

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 percent of the remaining amount of tax in dispute arising from the said order, **[***subject to a* ***maximum of twenty-five crore rupees,*****]** 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 twenty-five per cent of the penalty has been paid by the appellant.***]**

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

2024 (5) TMI 49 - DELHI HIGH COURT

PRAMOD KUMAR TOMAR (PROP. M/S. PARAMOUNT STEEL) VERSUS ASSISTANT COMMISSIONER MUNDKA DIVISION DELHI WEST, CENTRAL GOODS AND SERVICES TAX & ANR

in computing the period of limitation for an appeal

Section 12(1) of the Limitation Act

- **Determination of time limit for filing of Appeal** before the Appellate Authority
- Rejection of refund claim on the ground of time limitation
- Section 12(2) of the Limitation Act, in computing the period of limitation, the day on which the judgment complained of was pronounced, is also to be excluded.
- **Accordingly, even if it is assumed that the order was uploaded/communicated on the day it was signed i.e. 12.08.2022, said date of 12.08.2022 is to be excluded while computing the period of limitation.**
- Accordingly, the period of three months is to commence from 13.08.2022. Thus petitioner was liable to file the appeal by 12.11.2022. It is an admitted position that the appeal was filed alongwith a copy of the order, through the online mode on 12.11.2022, i.e. within the period of three months
- The appeal was within time and the impugned order erroneously rejects the appeal on the ground of limitation. Consequently, the impugned order dated 18.10.2023 is set aside. The appeal is restored on the records of the Appellate Authority. The Appellate Authority is now directed to decide the appeal on merits in accordance with law.

Earlier:HARu Das Gupta vs, State of West Bengal (1972)

BALAJI COAL TRADERS VS. COMMISSIONER, COMMERCIAL TAX
[2024] 163 TAXMANN.COM 36 (ALLAHABAD)

Sec 107(1)

Appeal by Aggrieved person against the order of Adjudicating Authority

Form 107(5)	Time limit 107(1)	Condonation 107(4)
GST APL-01	Within 3 months from communication of order	1 month

Pre-Deposits 107(6)

Mandatory Pre Deposit =AA

a. Full amount of undisputed tax/interest/penalty/fine
b. 10% of disputed TAX amount **Subject to max** 25 Crores (each)
c. 25% of Penalty in case of an order under Section 129(3)

Appellate Authority (Rule 109A)

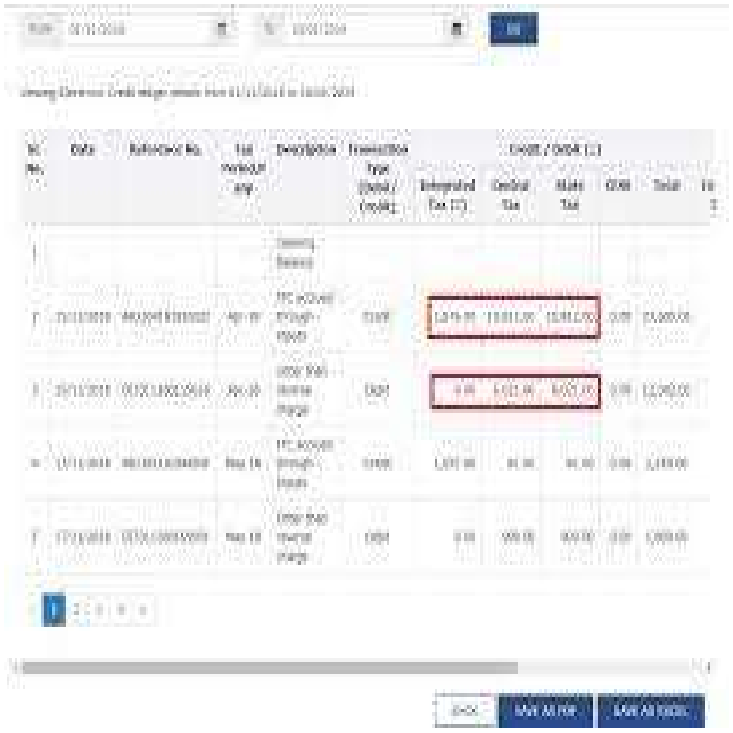
➲ Order Passed By (N/N 55/2017)

i)	Addt. Comm/Joint Comm.	→ Comm. (Appeal)
ii)	Asst.Comm. /D.Comm. or Superintendent	→ Any Officer not below the rank of Joint Comm.(Appeals)

AA shall not refer the case back for fresh adjudication.

APPEAL PRE-DEPOSIT

CASH OR CREDIT ----------MONEY IS MONEY



131 taxmann.com 104 (Orissa)[07-10-2021] HIGH COURT OF ORISSA JYOTI CONSTRUCTION

GST : Electronic Credit Ledger (ECL) could not be debited for purposes of making payment of pre-deposit of tax

- Petitioner firm could not be permitted to reverse debit of ECRL for paying pre-deposit and then making payment of pre-deposit of tax by debiting ECL
- Output Tax as defined under section 2(82) of OGST Act could not be equated to pre-deposit required to be made in terms of section 107(6) of OGST Act

Provisions to be Referred:

1) Section 41 ((41(1) Provisional Credit 41(2) Utilised only for Payment of Tax of Self Assessed Output Tax as per Return
2) Sec 42 Matching Mechanism kept in abeyance by virtue of Rule 69 1st proviso .Hence, the credit is Final Credit.
3) Sec. 49(4) becomes applicable ECrL amount may be used for making any payment towards Output Tax under this Act.
4) Rule 85(4) dealing with payment of Amount in cash "Any other Amount" cannot be equated with Pre Deposit.

Circular No. 172/04/2022

IV. Utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities

Q6. Whether the **amount available in the electronic credit ledger** can be used for making payment of any tax under the GST Laws?

- **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**

can be made by utilization of the amount available in the electronic credit ledger of a registered person.

- Also, the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.

Budget 2022 W.E.F 01.10.2022

Amendment in Section 41 vide Sec 106

Claim of input tax credit and provisional acceptance thereof

To do away with the concept of "claim" of eligible input tax credit on a "provisional" basis and to provide for availment of self assessed input tax credit subject to such conditions and restrictions as may be prescribed

~~**41.** (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.~~

~~(2) The credit referred to in sub-section (1) shall be utilised only for payment of self-assessed output tax as per the return referred to in the said sub-section.~~

41. (1) Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to avail the credit of eligible input tax, as self-assessed, in his return and such amount **shall be credited to his electronic credit ledger.**

In light of changed Sec 38(2)(b)

(2) The credit of input tax availed by a registered person under sub-section (1) in respect of such supplies of goods or services or both, the **tax payable whereon has not been paid by the supplier**, **shall be reversed along with applicable interest**, by the said person in such manner as may be prescribed:

Provided that where the said supplier makes payment of the tax payable in respect of the aforesaid supplies, the said registered person may **re-avail the amount of credit reversed by him** in such manner as may be prescribed."

There shud be no time limits of 16(4)

The Bombay High Court in OASIS REALTY -- 2022-TIOL-1287-HC-MUM-GST

CBIT&C has itself clarified

any amount towards output tax payable, as a consequence of any proceeding instituted under the provisions of GST Laws

can be paid by utilization of the amount available in the Electronic Credit Ledger of a registered person to pay the 10% of Tax in dispute as prescribed under Sub-section (6) of Section 107 of MGST Act.

The Orissa High Court , (Ranjan Naik - 2023-TIOL-425-HC-ORISSA-GST)

CBIT&C clarified in Circular No. 172/04/2022-GST

that payment of pre-deposit can be made by using the ECL instead of cash ledger.

Amended vide Clause 137 of FB, 2024

SECTION 107 – APPEALS TO APPELLATE AUTHORITY

(6)(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of **Twenty** crore rupees, in relation to which the appeal has been filed.

Substituted in place of Twenty Five

Second Proviso to Sub Section 11

Provided further that where the Appellate Authority 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 **or Section 74A**.

3. GST Council in its 53rd meeting recommended reduction of the **quantum of pre-deposit** required to be paid for filing of appeals under GST

Example 1:-

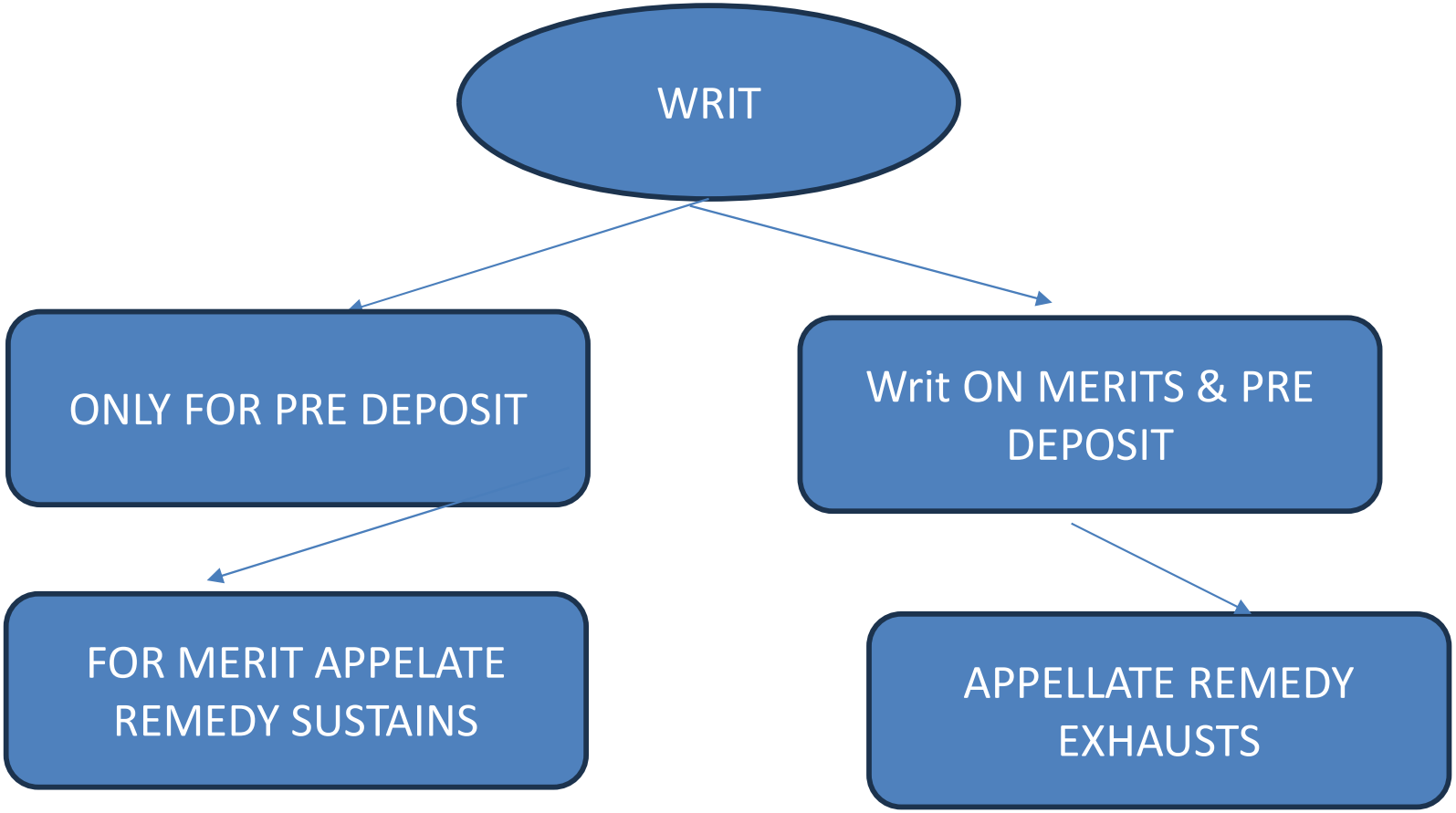
An adjudication order has been served upon Mr. Rakesh Kumar. The order confirms a tax demand of Rs. 300 Crore under the CGST act. Mr. Rakesh Kumar admitted the tax liability of Rs. 20 Crore under the CGST Act and wants to contest the balance amount in an appeal before the appellate authority. The effect amount to be paid by Mr. Rakesh Kumar prior to filling of appeal shall be computed as under:-

Particulars	**Amount (Rs. in Crore)**
Tax amount under the CGST Act, which has been admitted by Mr. Rakesh Kumar	20
Tax amount in dispute under the CGST Act	280
Amount of Pre-deposit for filling appeal- Rs. 20 Crore + (10% of the disputed amount of tax i.e. 10% of Rs. 280 Crore, subject to maximum amount of Rs. 20 crores	40(20+20)
Effective amount to be deposited after considering equivalent SGST amount	80

[2024] 161 taxmann.com 655 (Calcutta)
HIGH COURT OF CALCUTTA
Evergreen Construction *v.* Commissioner of Commercial Taxes, Government of West Bengal*

NO PRE-DEPOSIT IN CASE OF INTEREST

- GST: Where assessee filed writ petition challenging an adjudication order demanding interest on ground that assessee had belatedly filed returns
- High Court by impugned order directed assessee to deposit 20 per cent of disputed remaining unpaid interest, impugned order was to be set aside to extent of deposit of interest amount
- Appellate - Condition of Pre-deposit - Amount of interest - In a writ petition filed by assessee against order of Adjudicating Authority demanding interest on ground that assessee had belatedly filed returns for relevant financial year, assessee was directed by Single Judge Bench to deposit 20 percent of disputed remaining unpaid interest
- HELD : Legislative intent as amplified in section 112(8)(b) of CGST Act, 2017 clearly restricts pre-deposit amount to 20 per cent of remaining amount of tax in dispute and does not speak of interest
- Instant intra court appeal of assessee was to be allowed and portion of order passed by Single Judge directing assessee to pay 20 percent of remaining interest was to be set aside and respondent authority was to be directed to not to initiate any recovery proceedings till disposal of writ petition [Section 112 of Central Goods And Services Tax Act, 2017/West Bengal Goods And Services Tax Act, 2017] [Paras 13 and 14] [In favour of assessee]


WRIT
ONLY FOR PRE DEPOSIT
Writ ON MERITS & PRE DEPOSIT
FOR MERIT APPELATE REMEDY SUSTAINS
APPELLATE REMEDY EXHAUSTS

Conditions for Admissibilty of Writ Petition

2021 (9) TMI 480 – Supreme Court in the Assistant Commissioner of State Tax And Others Versus M/S Commercial Steel Limited

The existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution.

But writ petition can be entertained in exceptional circumstances where there is:

i. A breach of fundamental rights;
ii. A violation of the principles of natural justice;
iii. An excess of jurisdiction; or
iv. A challenge to the vires of the statute or delegated legislation.

As there was no violation of the principles of natural justice since a notice was served on the person in charge of the conveyance. In this backdrop, it was not appropriate for the High Court to entertain a writ petition.

[In favour of revenue]

Shamnad Abdul Kabeer *v.* Union of India [2023] 157 taxmann.com 682 (Kerala) HIGH COURT OF KERALA

Where assessee filed writ petition against order passed by Assessing Authority determining tax liability along with interest and penalty, since assessee had equally efficacious alternative remedy of filing appeal under section107, writ petition was to be dismissed

Appeal - Alternate remedy - Writ jurisdiction - Assessing Authority determined tax liability along with interest and penalty - A notice in GST DRC-07 had been issued directing petitioner to remit said amount within a period of three months, failing which, steps would be taken for recovery of said amount - Petitioner was also suggested to file an appeal under section107, if he was not satisfied with order passed by Assessing Authority - Instead of approaching appellate forum, petitioner approached High Court by filing instant writ petition - Held : There were no ground to entertain instant writ petition and petitioner had equally efficacious alternative remedy of executing appeal under section107, instant writ petition was to be dismissed [Section107 of CGST, 2017] [Para 3]

Constitutional Validity of Pre-deposit

It is well settled that pre-deposit provisions are constitutionally valid in Erstwhile Tax regime as well as under GST Laws

NAME	EXPLANATION
M/S. V.V.V. And Sons Edible Oil Ltd. v. The State of Tamil Nadu & Ors. [Civil Appeal No. 3964 of 2020 dated December 04, 2020]	**Disposed of the appeal** filed against the judgment passed by the Hon'ble Madras High Court, wherein, the **Assessee had challenged the constitutional validity of pre-deposit** contained under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (**"TNVAT Act"**) and held that, since the matter is still at the first appellate stage, the Appellant **would, therefore, be obliged to deposit 25% of the demanded sum.**
Faisal Ahmed Abdul Maik Javeri Vs Union of India (Bombay High Court) Writ Petition No. 6713 of 2018	PARA 21 No doubt, there are certain decisions, in which it has been held that the provisions of Customs Act will not affect the powers of jurisdiction of this Court under Article 226 of the Constitution of India. There is absolutely no dispute as regards such a proposition. This, however, means that in a given case there can be absolutely no bar to this Court examining orders made by statutory Authorities without requiring the petitioners to avail of alternative remedies that may be available under the Statute. In the facts and circumstances of the present case, however, no case is made out to entertain these writ petitions when there is really nothing demonstrated as to why the petitioners cannot avail the alternate remedy of appeal, which is very much available to them. **The contention that the requirement of pre-deposit itself constitutes a hardship, is neither pleaded nor elaborated. In any case, once the constitutional validity of such provision is upheld, we are not inclined to issue any writ or direction to the Appellate Authority to waive such mandatory requirement and entertain the petitions.**

NAME	EXPLANATION
United Projects *v.* State of Maharashtra* [2022] 141 taxmann.com 500 (Bombay) HIGH COURT OF BOMBAY	Mandatory pre-deposit of 10% of amount for entertaining appeal under Maharashtra VAT Act is a reasonable condition and it is **neither onerous nor violating Article 14 or 19(1)(*g*) of Constitution** Impugned amendment is **constitutionally valid** - Government has power to amend MVAT Act to incorporate condition of mandatory pre-deposit for entertaining appeal post Constitutional Amendment (101st) Act, 2016 [Section 26 of Maharashtra Value Added Tax Act, 2002 & Article 14 of Constitution of India] [Paras 105, 106, 107, 109, 112, 113, 116, 119, 124 and 194] [In favour of revenue]
Tecnimont (P.) Ltd. *v.* State of Punjab [2019] 111 taxmann.com 263 (SC) SUPREME COURT OF INDIA	Section 2(8) of the Central Goods and Services Tax Act, 2017/Section 62 of the Punjab Value Added Tax Act, 2005 - Appeals and revision - Whether section 62(5) which imposes condition of 25 per cent pre-deposit for hearing first appeal is **neither onerous, harsh and unreasonable, nor, violative of provisions of article 14 of Constitution of India** - Held, yes - Whether statute mandates that no appeal can be entertained unless such requirement is satisfied and Appellate Authority cannot override statutory requirement of such pre-deposit - Held, yes [Paras 7 and 24]

NAME	EXPLANATION
Satya Nand Jha Vs UOI [2017 (349) E.L.T. A155 (S.C.)]	The right of appeal has not been taken away per se. It is settled law that legislature while granting the right of appeal, can always impose conditions for exercise of such right. In absence of any special reason, there is no legal or constitutional impediment to the imposition of such conditions. Under new provisions ex facie 92.5% or 90% of dues is already waived by the Statute itself. Accordingly, condition of 7.5% or 10% payment as pre-deposit cannot be called illegal. Merely because in one case the assessee is getting benefit and in the other he is not, the substituted Section 35F cannot be termed as unconstitutional. Whenever, any cutoff date is prescribed, there are bound to be few persons who will fall on the wrong side of the cutoff date. This fact neither makes the classification void nor the provision unconstitutional. Thus, there is no reason to quash Section 35F and is constitutionally valid.
2024 (1) TMI 539 - GUJARAT HIGH COURT M/S. UNIVERSAL GEMS VERSUS UNION OF INDIA	**Requirement of mandatory pre-deposit under Section 129-E of Customs Act, 1962 -** HELD THAT:- On perusal of Section 129E of the Customs Act, it is clear that it is mandatory for the person being aggrieved by the order passed by the authority to deposit 7.5% or 10%, as the case may be, of the total demand as pre-condition and pre-deposit towards preferring appeal before the appellate authority. This mandatory provisions are required to be adhered to by the petitioner - the same cannot be declared to be inapplicable in the facts of the case as it is mandatory requirement for the petitioner to pre-deposit requisite amount so as to enable the appellate authority to consider the appeal on merits. It is made clear that the merits of the matter or prima face case of the petitioner in view of the mandatory provision requiring the petitioner to pre-deposit requisite amount as per section 129E of the Customs Act, not considered. The petitioner would be entitled to raise all the contentions raised in this petition before the appropriate authority. Petition dismissed.

Can Pre-Deposit be waived ?

Waiver depends on the Merits of Case

No hard-and-fast rule for where pre-deposit may be waived. It depends on the facts and circumstances of the case how strong is the case presented.

Summary of the cases where appellant may/may not apply for waiver of pre-deposit:

Cases where waiver of pre-deposit may be granted	Cases where waiver of pre-deposit may NOT be granted
Where Financial hardship can be substantiated or no means to remit such amount	When provision mandates per-deposit, then no waiver can be provided
Where the issue has already been settled in favour of the assessee by higher courts	Where Financial hardship is not substantiated and in cases of fraud, etc
Where pre-deposit would lead to financial breakdown and irreparable harm to him	Where higher courts cannot intervene
When matter appealed is contentious	Undue delay in submission of application
When a matter is pending in the Supreme Court	

Scenarios where pre-deposit was waived

NAME	EXPLANATION
2023 (11) TMI 717 - PUNJAB AND HARYANA HIGH COURT M/S. SHIVA TEXFABS LTD. VERSUS STATE OF PUNJAB AND ORS.	**High Court has the power to reduce or waive the amount of pre-deposit paid at the time of filing the appeal due to financial hardship faced by the Assessee** Keeping in view the fact that the petitioner is in huge debt and the fact that the petitioner is ready to deposit 10% as pre-deposit instead of 25% of the total demand before the Appellate Authority, this Court by exercising the inherent powers as provided under Article 226 of the Constitution of India and by considering the financial hardship faced by the petitioner, this petition is being disposed of by directing the petitioner (s) to file an appeal and respondent-authorities is directed to entertain the appeal and decide in accordance with law on merits. Relied upon the judgment of the Hon'ble Supreme Court in the case of M/s. Tecnimont Pvt. Ltd. v. State of Punjab & Others [Civil Appeal No. 7358 of 2019 dated September 18, 2019] wherein it was held that the High Court has inherent powers to grant exemption from payment of pre-deposit or limitation in cases of genuine hardship by way of writ petition.
2019 (9) TMI 788 - SUPREME COURT M/S TECNIMONT PVT. LTD. VERSUS STATE OF PUNJAB & OTHERS	As per the relevant provision, no appeal against the ratable value or tax would be entertained unless the amount claimed was deposited with the Commissioner. The proviso to said Section however empowered the Judge considering the appeal to relieve the appellant from the rigour of pre-deposit if in the opinion of the Judge it would cause undue hardship to the appellant.

NAME	EXPLANATION
2023 (5) TMI 23 - DELHI HIGH COURT *MOHAMMED AKMAM UDDIN AHMED* & ORS. VERSUS COMMISSIONER APPEALS CUSTOMS AND CENTRAL EXCISE & ORS.	**Stay of pre-deposit - Constitutional vires of Section 129E of the Customs Act, 1962 - seeking a direction to Respondents to admit the Appeal filed by the Petitioners without pre-deposit of the mandatory duty as stipulated in Section 129E of the Act -** HELD THAT:- A Coordinate Bench of this Court in Pioneer Corporation case [**2016 (6) TMI 437 - DELHI HIGH COURT**], where the Court, while discussing the amendment made to Section 35F of the Central Excise Act, 1944 [CE Act] (which Section is pari materia to Section 129E of the Act and also requires a pre-deposit in the case of an Appeal), held that prior to the amendment of Section 35F of the CE Act, a discretion was available to the Central Excise and Service Tax Appellate Tribunal [CESTAT] to **consider financial hardship and accordingly determine the pre-deposit amount post the amendment, a direction of waiver of the pre-deposit would be contrary to the express legislative intent of the amendment**. However, **it further held that the jurisdiction of the High Court under Article 226 cannot be taken away and that such power should be used only in rare and deserving cases where a clear justification is made out for such interference.**
Vijay Chauhan Vs Commissioner of Customs (Export) [2019 (365) E.L.T. 864 (Del.)]:	• Mandatory pre-deposit of 7.5% of amount demanded by adjudication order passed in SCN issued after amendment brought in Section 129E of Customs Act, 1962 by Finance Act, 2014 w.e.f. 6-8-2014. • Petitioners pleading that adjudication order passed without affording them opportunity of hearing. Affidavit filed by them also indicating that they are employee as a driver and roadside tea vendor not having sufficient means. • In such peculiar circumstances, condition of mandatory pre-deposit of 7.5% of amount demanded is waived in its entirety and appeals before Commissioner (Appeals) directed to be heard on merits without insisting on any pre-deposit.

NAME	EXPLANATION
Shubh Impex Vs UOI [2018 (14) G.S.T.L. 4 (Del.)]:	We agree with the counsel for the petitioner that direction to deposit Rs.1.27 crores as a pre-condition for hearing of the appeal, in the facts of the present case and in view of the nature of the controversy involved, would deprive and deplete the petitioner of his cash-in-hand and would completely disable and paralyse business operations. **Condition and requirement to make complete pre-deposit of Rs.1.27 crores would not be appropriate and correct given the financial condition and background of the petitioner, who would suffer financial breakdown and irreparable harm.**
Tarini Minerals (P) Ltd Vs UOI [2021 (50) G.S.T.L. 494 (Ori.):	***When Matter is pending in the Supreme Court*** In this case, since the issue of service tax liability on mining royalty is pending in the Supreme Court, and an interim order was passed by the Apex Court, it was held that: *"It is open to the petitioner to bring all these facts before the appellate forum by filing interlocutory application seeking waiver of pre-deposit of the amount for entertaining the appeal. If such application is filed, the appellate authority shall consider the same taking into consideration the orders passed by the Apex Court and pass appropriate order in accordance with law."*
BMM Ispat Ltd Vs C.C., C. Ex. & Service Tax [2016 (331) E.L.T. 363 (Bom.)]:	• There were issues with classification relating to import of coal (whether steam of bituminous) becoming contentious on Chennai Bench of Tribunal taking a different stand from decisions of other Co-ordinate Benches and referring matter to Larger Bench. **In view of this unconditional waiver of pre-deposit ordered.** • However, the Department is at liberty to seek modification of this order in event of Tribunal being unable to take up and dispose of appeals expeditiously

NAME	EXPLANATION
Hindustan Petroleum Corpn Ltd Vs Commissioner of Central Excise [2015 (322) E.L.T. 262 (Kar.)]:	This pertains to Section 35F as it stood prior to amendment in 2014. The observations of the Court were as follows: • When an appeal is filed, law contemplates deposit of duty and therefore, necessarily assessee has to seek relief of stay of the said order. The present case is one such case where the stay is granted subject to the condition that 50% of the duty is paid. • In fact, for the subsequent period, on the date the order of stay was passed, which is impugned in this case, the tribunal allowed the appeal and granted the relief. Certainly, **the Tribunal ought to have taken note of the earlier judgment which is affirmed by the Apex Court, which was rendered on the day the interim stay was granted.** • **It is a discretionary order to exempt them from depositing the duty, which has not been done.** Such an attitude of the Government encourages the department to file appeals notwithstanding the declaration of the law by Apex Court and the High Court cannot be a silent spectator. The interim order of the Tribunal is set aside. The case was then remanded back to the Tribunal to be taken up on merits and the whole of pre-deposit requirement was waived off.

NAME	EXPLANATION
Kelmar (India) Exports Vs State of Punjab and others (Punjab and Haryana High Court) Appeal Number : CWP No. 17975 of 2020 Date of Judgement/Order : 02/11/2020	HC allows Appeal under PVAT on deposit of 10% total demand instead of 25% It was observed that the petitioner was having remedy under Article 226 of the Constitution of India for seeking any relaxation or waiving off the amount for hearing of the appeal. No doubt, any specific ground has not been taken for showing the financial hardship but it has been mentioned in second prayer that due to financial loss in business, the petitioner could not deposit the amount of 25% as pre-deposit. During the course of arguments, it has been submitted by learned counsel for the petitioner that the petitioner would deposit 10% of the total demand as directed by the Appellate Authority, in case, his appeal is heard on merits. Although, as per provisions of Section 62(5) of the PVAT Act, no appeal can be entertained unless the same is accompanied by satisfactory proof of the prior minimum payment of twenty-five percent of the total amount of additional demand created, penalty and interest, if any. It is not disputed that the Appellate Authority directed the petitioner to deposit 10% instead of 25% as pre-deposit for hearing of the appeal but the petitioner could not deposit the said amount as well. Now the petitioner is ready to deposit 10% of the total demand so that his appeal can be heard on merit.

Scenarios where pre-deposit was Not Waived

NAME	EXPLANATION
ITC Ltd Vs CESTAT, Chennai [2021 (377) E.L.T. 549 (Mad.)]:	• In this case, the assessee approached the High Court only for waiver of pre-deposit, since the assessee had already debited the Personal Ledger Account with some amount of duty, during investigation by the Department. • The Court observed that irrespective of the fact whether the issues is covered on merits or not and covered by an order of the Tribunal for the previous period, the petitioner is required to pre-deposit 7.5% of the disputed tax and/or penalty or both together at the stage of the first appeal before the second respondent Commissioner of Central Excise (Appeals) and another sum of 2.5% totalling to 10% at the stage of Appeal before the first respondent Tribunal. This statutory minimum cannot be waived. • It was also observed that the idea of rationalizing this amount to a statutory minimum is to spur final hearing of the appeal by the Tribunals and Commissioner (Appeals). Further, the Registry of the first respondent is really not concerned with the merits of the case and therefore, cannot waive the amount. • Therefore, it is not possible under the scheme of the amendment to the Act for the petitioner to expect the Registry of the first respondent Tribunal to adjudicate the same. Therefore, the challenge to the impugned communication on the score has to fail. • It would have been different if the petitioner had challenged the order impugned before the first respondent Tribunal before this Court. Since the writ petition is predicated and a different relief is sought for and is confined to only the issue relating to pre-deposit, **this Court is unable to grant the relief as prayed for notwithstanding few decisions of the other High Courts granting relief to the assessees as the jurisdiction of this Court under Article 226 of the Constitution of India is intended to effectuate the law and not abrogate it.**

NAME	EXPLANATION
M/s Pioneer Corporation Versus UOI [2016 (6) TMI 437 - Delhi High Court]:	• While, the jurisdiction of the High Court under **Article 226 of the Constitution to grant relief notwithstanding the amended Section 35F cannot possibly be taken away,** the Court is of the view that the said power should be used in rare and deserving cases where a clear justification is made out for such interference. • The Court held that it is not persuaded to exercise its powers under Article 226 to direct that there should be a complete waiver of the pre-deposit as far as the Petitioner's appeal before the CESTAT is concerned
2024 (1) TMI 539 - GUJARAT HIGH COURT M/S. UNIVERSAL GEMS VERSUS UNION OF INDIA	**Requirement of mandatory pre-deposit under Section 129-E of Customs Act, 1962 -** HELD THAT:- On perusal of Section 129E of the Customs Act, it is clear that it is mandatory for the person being aggrieved by the order passed by the authority to deposit 7.5% or 10%, as the case may be, of the total demand as pre-condition and pre-deposit towards preferring appeal before the appellate authority. This mandatory provisions are required to be adhered to by the petitioner - the same cannot be declared to be inapplicable in the facts of the case as it is mandatory requirement for the petitioner to pre-deposit requisite amount so as to enable the appellate authority to consider the appeal on merits. It is made clear that the merits of the matter or prima face case of the petitioner in view of the mandatory provision requiring the petitioner to pre-deposit requisite amount as per section 129E of the Customs Act, not considered. The petitioner would be entitled to raise all the contentions raised in this petition before the appropriate authority. Petition dismissed.

NAME	EXPLANATION
M/S Nava Raipur Atal Nangar Vikas Pradhikaran Vs UOI [2023 (5) TMI 862 - Chhattisgarh High Court]:	• The High Court observed that that the words in the amended Section 35F indicated that on and after the date of its enforcement an Assessee in appeal was required to deposit the stipulated percentage of duty and if it failed to do so, the CESTAT shall not entertain the appeal. • It was also observed that the reason assigned in the writ petition is only of financial crises during Covid-19 Pandemic period. However, documents like balance sheet filed along with the petition would show that the petitioner is in profit after the Covid-19 Pandemic period. • Thus, waiver of pre-deposit was not granted. However, the Court extended time by 3 months for the petitioner to pay the pre-deposit amount to contest the case in CESTAT.
M/s. Vish Wind Infrastructure LLP Vs Additional Director General (Adjudication) [2019 (8) TMI 1809 - Delhi High Court]:	**High Court cannot intervene** *"It is trite that **no court can issue a direction to any authority, to act in violation of the law. A reading of Section 35F of the Central Excise Act reveals, by the usage of the peremptory words "shall not" therein, that there is an absolute bar on the CESTAT entertaining any appeal, under Section 35 of the said Act, unless the appellant has deposited 7.5 % of the duty** confirmed against it by the authority below - The two provisos in Section 35F relax the rigour of this command only in two respects, the first being that the amount to be deposited would not exceed ₹ 10 crores, and the second being that the requirement of pre-deposit would not apply to stay applications or appeals pending before any authority before the commencement of the Finance (No.2) Act, 2014, i.e. before 6th August, 2014."*

Rk1

WHETHER THE DEMAND OF INTEREST AND PENALTY IS LIABLE TO BE STAYED

SR.NO	Name & Citation	Particulars
1.	**PRAFULLA KUMAR SAHOO VERSUS COMMISSIONER OF CT & GSTODISHA, BANIJYAKAR BHAWAN & OTHERS - 2023 (5) TMI 1145 - ORISSA HIGH COURT**	The Hon'ble High Court in W.P.(C) No. 15842 of 2023 held as under: • Issued notice to the Revenue Department. • Noted that, in case the Petitioner wants to avail the remedy by preferring appeal before the GSTAT, the Petitioner would be liable to pay **20%** of the disputed **tax** for consideration of its appeal. • Observed that, the Petitioner wants to avail the remedy under the provisions of law by approaching GSTAT, which has not yet been constituted. • **Held that, the amount of penalty and interest demanded shall remain stayed during pendency of the petition, subject to the condition that the Petitioner deposits the entire amount of tax demanded within a period of 15 days.**

Slide 66

Rk1 Rohit kapoor, 13-02-2024

Sr.No	Name and citations	
	2023 (9) TMI 272 - PATNA HIGH COURT **SITA PANDEY VERSUS THE STATE OF BIHAR, THROUGH THE COMMISSIONER OF STATE TAX, PATNA, THE JOINT COMMISSIONER OF STATE TAX (APPEAL) , PATNA, THE ASSISTANT COMMISSIONER OF STATE TAX**	The Assessing Authority in the scheme of the enactment could not have made recovery of the entire amount. Section 112 provides for **twenty per cent** of the tax amount due, **in addition** to the **ten per cent** amount paid at the first appellate stage, for maintaining a second appeal before the Appellate Tribunal. On such payment being made under Section 112(8), there is also a requirement that the further recovery proceedings would be stayed. Hence, what was required to be paid by the assessee, for maintaining an appeal before the Appellate Tribunal, if constituted, was Rs. 7,56,644.00 being the **twenty per cent** of the tax dues under the BGST and CGST Act. Hence, the balance amounts from the total sums forfeited of Rs. 69,88,322.00 **recovered shall be paid over to the assessee** within a period of **two weeks** from today, failing which interest shall run at the **rate of 12 per cent** per annum - If the liability is set aside then for the periods the assessee was deprived of the amounts recovered, she shall be entitled to claim interest from the department.
	2024 (1) TMI 708 - PATNA HIGH COURT **BAGESHWARI PRASAD SON *OF* LATE KALI YADAV VERSUS THE UNION *OF* INDIA THROUGH THE SECRETARY, MINISTRY *OF* FINANCE (DEPARTMENT *OF* REVENUE) ,** GOVERNMENT *OF* BIHAR, PATNA, THE UNDER SECRETARY, DEPARTMENT *OF* FINANCE, GOVERNMENT *OF* BIHAR, PATNA, THE PRINCIPAL SECRETARY, DEPARTMENT *OF* FINANCE, GOVERNMENT *OF* BIHAR, PATNA, THE COMMISSIONER, STATE TAX, MAGADH CIRCLE, GAYA., THE ADDITIONAL COMMISSIONER, APPEAL SALE TAX, MAGADH DIVISION, GAYA.,	The respondent State authorities have acknowledged the fact of non-constitution of the Tribunal and come out with a notification bearing Order No. 09/2019-State Tax, S. O. 399, dated 11.12.2019 for removal of difficulties, , in exercise of powers under Section 172 of the B.G.S.T Act, which provides that period of limitation for the purpose of preferring an appeal before the Tribunal under Section 112 shall start only after the date on which the President, or the State President, as the case may be, of the Tribunal after its constitution under Section 109 of the B.G.S.T Act, enters office. **Subject to deposit of a sum equal to 20 percent of the remaining amount of tax in dispute, if not already deposited**, in addition to the amount deposited earlier under Sub-Section (6) of Section 107 of the B.G.S.T. Act

- **GST : Assessee could not be deprived of statutory benefit of stay under section 112(9) of CGST Act, 2017 due to non-constitution of GST Appellate Tribunal and subject to their deposit of 20% of remaining amount of tax in dispute in addition to amount earlier deposited before filing of appeal before First Appellate Authority under section107(6) ibid, recovery of balance amount was stayed**

- **[2023] 150 taxmann.com 33 (Patna)**
- **HIGH COURT OF PATNA**
- **Shapoorji Pallonji and Co. (P.) Ltd.**
- ***v.***
- **State of Bihar**
- CHAKRADHARI SHARAN SINGH, ACJ.
AND MADHURESH PRASAD, J.
- CIVIL WRIT JURISDICTION CASE NO. 16084 OF 2022
- MARCH 23, 2023

- **Stay of recovery of demand - Non-constitution of GST Appellate Tribunal - Petitioner-assessee could not be deprived of statutory benefit of stay under section 112(9) of Central Goods and Services Tax Act, 2017 due to non-constitution of Appellate Tribunal - Hence subject to assessee's depositing a sum equal to 20% of remaining amount of tax in dispute, if not already deposited, in addition to amount earlier deposited under section107(6) ibid before filing of appeal before First Appellate Authority, recovery of balance amount and any steps that might have been taken in this regard would be deemed to be stayed - However, such statutory benefit of stay could not be open ended and therefore, assessee was directed to file appeal under section 112 ibid as and when Appellate Tribunal would be constituted and made functional [Section107, read with section 112 of Central Goods and Services Tax Act, 2017/Bihar Goods and Services Tax Act, 2017] [Paras 6 to 9] [In favour of assessee]**

Siemens Ltd. *v.* State of Bihar [2023] 157 taxmann.com 571 (Patna) HIGH COURT OF PATNA

Where Appellate Tribunal was not yet constituted and made functional, assessee could not be deprived of statutory benefit; assessee was allowed to file appeal after deposit of a sum equal to 20 percent of remaining amount of tax in dispute

Assessee had filed instant petition seeking a writ of certiorari for quashing order passed by Assistant Commissioner (Appeals) in appeal preferred by it - Assessee submitted that due to non-constitution of Tribunal, it was deprived of statutory remedy of appeal under section 112(8) and (9) - HELD : Assessee would be allowed to file his appeal once Tribunal was constituted and made functional and President or State President may enter office - Subject to deposit of a sum equal to 20 per cent of remaining amount of tax in dispute - In case assessee chose not to avail remedy of appeal by filing any appeal under section 112 before Tribunal within period which may be specified upon constitution of Tribunal, authorities would be at liberty to proceed further in matter, in accordance with law - Writ Petition was to be disposed of [Section 112 of CGST Act, 2017] [Paras 6 and 7] [In favour of assessee]

Sec 107(2)

Commissioner to direct any officer subordinate to him to appeal to Appellate Authority

The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, 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 State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order

and

may, by order, direct any officer subordinate to him to apply to **the Appellate Authority** within six months from the date of communication of the said decision or order

for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

Sec 107(3)

Where, in pursuance of an order **under sub-section (2)**, the authorised 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 authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.**

Sec 107(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 **three months or six months**, as the case may be, allow it to be presented within a **further period of one month.**

Sec 107(5)

Every appeal under this section shall be in such **form** and shall be verified in such **manner as may be prescribed**

Rule 109

Sec 107(1)

Appeal by Aggrieved person against the order of Adjudicating Authority

Form 107(5)	Time limit 107(1)	Condonation 107(4)
GST APL-01	Within 3 months from communication of order	1 month

Sec 107(2)

Commissioner to direct any officer subordinate to him to appeal to Appellate Authority

Form 107(5)	Time limit 107(2)	Condonation 107(4)
GST APL-03	Within 6 months from communication of order.	1 month

Pre-Deposits

Mandatory Pre Deposit =AA

a. Full amount of undisputed tax/interest/penalty/fine
b. 10% of disputed TAX amount **Subject to max 25 Crores (each)**

Provided that 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.

Appellate Authority (Rule 109A)

➲ Order Passed By (N/N 55/2017)

i)	Addt. Comm/Joint Comm.	→ Comm. (Appeal)
ii)	Asst.Comm. /D.Comm. or Superintendent	→ Any Officer not below the rank of Joint Comm. (Appeals)

AA shall not refer the case back for fresh adjudication.

No Pre-Deposits

Rule 109 Appeal to the Appellate Authority`

NOTIFICATION No. 26/2022- CT

Rule 109 Substituted

(1) An application to the Appellate Authority ***under sub-section (2) of section 107*** *shall be made in* ***FORM GST APL-03,*** *along with the relevant documents, electronically and a provisional acknowledgement shall be issued to the appellant immediately.*

Provided *that an appeal to the Appellate Authority may be filed manually in FORM GST APL-03, along with the relevant documents, only if-*

(i)The Commissioner has so notified, or

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

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

(w.e.f. 04.08.2023 NOTIFICATION NO. 38/2023- Central Tax dated 04-08-2023)

(2) Where the decision or order appealed against is uploaded on the common portal, a final acknowledgement, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority *or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgement shall be considered as the date of filing of appeal under sub-rule (1):*

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

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

Same amendment as Rule 108(3)

w.e.f. 04.08.2023 NOTIFICATION NO. 38/2023- Central Tax dated 04-08-2023

RULE 109

EARLIER

109(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be filed in FORM GST APL-03, along with the relevant documents, **either electronically or otherwise as may be notified by the Commissioner"** and a provisional acknowledgement shall be issued to the appellant immediately:

NOW

109(1) An application to the Appellate Authority under sub-section (2) of section 107 shall be filed in FORM GST APL-03, along with the relevant documents, ***electronically*** *and a provisional acknowledgement shall be issued to the appellant immediately*:

Sec 107(8)

The Appellate Authority shall give an **opportunity to the appellant of being heard.**

Sec 107(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.

Sec 107(10)

The Appellate Authority 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.

Rule 110 & 111 deals procedure related with Appeal to the Appellate Tribunal

Rule 112 - Production of Additional Evidence

Additional Evidence means an evidence other than the evidence produced by him during the proceeding before Adjudicating Authority or the Appellate Authority or Appellate Tribunal

The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary ***except in following :-***

Contd.

EXCEPTIONS :
i.e. Cases where Additional Evidence can be produced

where the adjudicating authority or the Appellate Authority has refused to admit evidence which ought to have been admitted

where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or the Appellate Authority

where the appellant was prevented by sufficient cause from producing before the adjudicating authority or the Appellate Authority any evidence which is relevant to any ground of appeal

where the adjudicating authority or the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Sec 107(11)

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:**

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 Appellate Authority 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.

No Remand Back/Set aside

Can enhance the demand? YES

107(11) is Pari Materia to Section 35A(3)

Sec 107(11) of CGST Act, 2017

107(11): 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.

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 Appellate Authority 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.**

Sec 35A(3) of Central Excise Act, 1944

35A(3): The Commissioner (Appeals) shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against:

Provided that an **order enhancing any penalty or fine** in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund **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 Commissioner (Appeals) is of opinion that any duty of excise has not been levied or paid or has been short-levied or short-paid or erroneously refunded, **no order requiring the appellant to pay any duty not levied or paid, short-levied or short-paid or erroneously refunded shall be passed unless the appellant is given notice within the time-limit specified in section 11A to show cause against the proposed order.**

The Provisions of Section 35A(3) of Central Excise Act, 1944 being Pari Materia to The Provisions of Section 107(11) of CGST Act, 2017

Powers of Commissioner (Appeals) [Section 251], Income-Tax Act, 1961

251(1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers-

(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment

(aa) in an appeal against the order of assessment in respect of which the proceeding before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the inquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annual the assessment.

(*b*) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty.

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

251(2) **The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.**

Principle of "no reformatio in peius"

Means

That a person should not be placed in a worse position, as a result of filing an appeal. It is a latin phrase, expressing the principle of procedure, according to which, using the remedy at law, should not aggravate the situation of the one who exercises it.

Case Laws of Erst while Regime

S. No.	Name and Citation
1	Servo Packaging Ltd. v. Customs Excise & Service Tax Appellate Tribunal, Chennai [2016] 73 taxmann.com 183 (Madras)
2	Commissioner of Central Excise, Mumbai v. Ramkumar & Sons (P.) Ltd. [2016] 65 taxmann.com 302 (Mumbai - CESTAT)
3	Deepak & Co. v. Commissioner of Central Excise, New Delhi [2014] 47 taxmann.com 251 (New Delhi - CESTAT)
4	Bhuwalka Steel Industries Ltd. v. Commissioner of Central Excise, Bangalore [2004] 2004 taxmann.com 135 (Bangalore - CESTAT)

GST Case Laws

S. No.	Name and Citation
1	Radiant Enterprises (P.) Ltd. v. Joint Commissioner, CGST & CX (Appeal I) [2023] 147 taxmann.com 245 (Calcutta)

GST : Appellate authority does not have jurisdiction to frame and take up issues which do not emanate from order passed by adjudicating authority

The power under the said provision had to be invoked, then the appellants should have been put on notice. It is not the case of respondents/revenue that the appellate authority thought fit to take up the other issues, that too in an appeal filed by the appellants against an order of rejection of the refund claim. That apart, there is no direction issued to any authority to file an application for considering the other issues. Therefore, assuming appellate authority has exercised its power under section 107(2) of the CGST Act, such exercise is not in accordance with the said statutory provision and being in violation of the said provision as well as violation of the principles of natural justice. The appellate authority could not have taken a decision on the second issue, which did not emanate from the order passed by the original authority.

In this regard the following cases of CGST Act,2017 and Second Proviso to Section 35A(3) of Central Excise Act, 1944 being Pari Materia to Second Proviso to Section 107(11) of CGST Act, 2017 are worth considering:

S. No.	Name & Citation	Particulars
1.	[2023] 147 taxmann.com 245 (Calcutta) HIGH COURT OF CALCUTTA Radiant Enterprises (P.) Ltd. v. Joint Commissioner, CGST & CX (Appeal-I)	Appellate Authority does not have jurisdiction to frame and take up issues which do not emanate from order passed by adjudicating authority. The power under the said provision had to be invoked, then the appellants should have been put on notice. It is not the case of respondents/revenue that the appellate authority thought fit to take up the other issues, that too in an appeal filed by the appellants against an order of rejection of the refund claim. That apart, there is no direction issued to any authority to file an application for considering the other issues. Therefore, assuming appellate authority has exercised its power under section 107(2) of the CGST Act, such exercise is not in accordance with the said statutory provision and being in violation of the said provision as well as violation of the principles of natural justice. The appellate authority could not have taken a decision on the second issue, which did not emanate from the order passed by the original authority.
2.	[2016] 73 taxmann.com 183 (Madras) HIGH COURT OF MADRAS Servo Packaging Ltd. v. Customs Excise & Service Tax Appellate Tribunal, Chennai	In absence of any appeal or cross-objection by department, assessee cannot be put in a worse position in their own appeal - [In favour of assessee]
3.	[2016] 65 taxmann.com 302 (Mumbai - CESTAT) CESTAT, MUMBAI BENCH Commissioner of Central Excise, Mumbai v. Ramkumar & Sons (P.) Ltd	The impugned order cannot travel beyond scope of show-cause notice and - Hence, matter was remanded back to Commissioner (Appeals) for re-adjudication

4	**[2014] 47 taxmann.com 251 (New Delhi - CESTAT)** **CESTAT, NEW DELHI BENCH Deepak & Co. v. Commissioner of Central Excise, New Delhi**	**Show-cause notice proposed demand under support service of business or commerce and did not allege that, in alternative, assessee's services may be taxable as 'business auxiliary service' - Commissioner (Appeals), in impugned order, after giving a finding that assessee's activity was not 'support service of business or commerce' could not go on to examine taxability of their activity as 'business auxiliary service' - In doing so, Commissioner (Appeals) travelled beyond scope of show-cause notice which is not permissible - Hence, demand was set aside [In favour of assessee]**
5	[2004] 2004 taxmann.com 135 (Bangalore - CESTAT) CESTAT, BANGALORE BENCH Bhuwalka Steel Industries Ltd. v. Commissioner of Central Excise, Bangalore	Commissioner (Appeals) remanded the case with new direction beyond the proposal made in the show cause notice - New parameters cannot be laid down for re-adjudication - Remand order not sustainable [In favour of assessee]

Conclusion:

For the purpose of enhancing the demand beyond the scope of the show cause notice issued by the assessing officer,

1)The statute should have entrusted the power to the Appellate Authority to issue fresh show cause notice for raising demand on grounds not covered by the show cause notice issued by the assessing officer. This power has been vested by way of Second Proviso to Section 107(11) of the CGST Act, 2017; and

2) Appellate Authority should have issued fresh show cause notice exercising such power by virtue of Second Proviso to Section 107(11) of CGST Act, 2017. Hence, on fulfilling the above conditions, it appears that Appellate Authority can only go beyond the original show cause notice, otherwise order going past the scope of the original show cause notice would be ultra vies the statute.

Hon'ble Allahabad HC - M/s KRONOS SOLUTIONS INDIA PRIVATE LIMITED Vs UNION OF INDIA GST (2024-VIL-106-ALH)

GST Appellate authority may either confirm or modify or annul the order under appeal **but cannot Remand the proceedings to the original authority in terms of Section 107(11)**

– Appeal against order passed by the Adjudicating Authority - Power of Appellate Authority to remand the matter to Adjudicating Authority

– HELD – in terms of Section 107(11) of CGST Act, 2017 the appellate authority may either confirm or modify or annul the order under appeal. In the face of statutory prescription allowing for only three options to the appeal authority, no inherent power may remain be exercised by the appeal authority to set aside the order under appeal and remand the proceedings to the original authority - Any doubt in that regard has been clarified by the legislature itself by stating that the appeal authority shall not refer the matter back to the adjudicating authority - appeal authority has failed to exercise its jurisdiction in accordance with law – the impugned order is set aside and the matter is remanded to the appeal authority to pass a fresh order after hearing the parties afresh - The writ petition stands allowed

Sec 107(12)

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.

Sec 107(13)

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.

Sec 107(14)

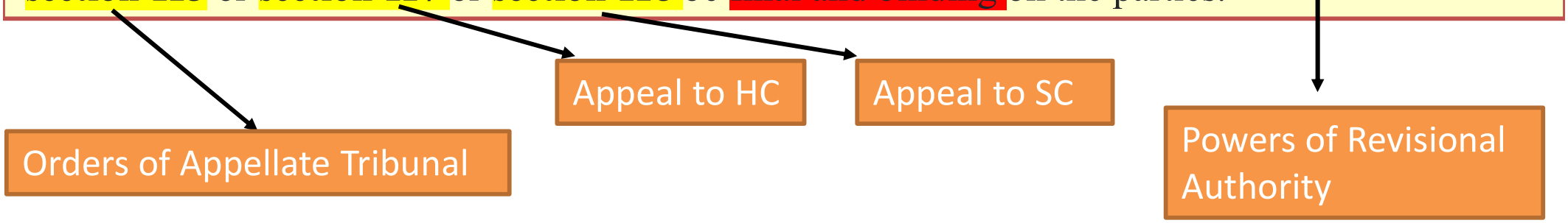
On disposal of the appeal, the **Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.**

Sec 107(15)

A copy of the order passed by the Appellate Authority 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.



Rule 109C Withdrawal of Appeal

NOTIFICATION No. 26/2022- CT w.e.f. 26.12.2022

Inserted

Appellant; At the time

a) Before issuance of show cause notice u/s 107(11)

OR

b) Before issuance of the order u/s 107(11)

whichever is earlier

In respect of any appeal filed in FORM GST APL-01 or FORM GST APL-03, file an application for withdrawal of the said appeal by filing an application in FORM GST APL-01/03W

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

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

SEC 115 - Interest on refund of amount paid for admission of appeal.

Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 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.

@ 9%

SEC 116 –Appearance by Authorised representative.

Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative.

- His relative or regular employee
- An Advocate
- CA /CS/ CMA (holding COP)
- A retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:
- Any person authorized to act as a GST Practitioner

SEC 112

Appeal to Appellate Tribunal (GSTAT)

Against the order of Appellate Authority (u/s 107) or Revisional Authority (u/s 108) (APL-05) within 3 months from communication of order

Pre-Deposits

Mandatory Pre Deposit =AT

a. Full amount of undisputed tax/interest/penalty/fine
b. 20% of remaining amt of tax in dispute (in addition to 10%(sec 107(6)) **Subject to max 50 Crores**

In addition to Pre deposits to AA

SEC 117

Appeal to High Court

Against the order of Appellate Tribunal (State Benches)

where disputed point is other than Place of Supply

SEC 118

Appeal to Supreme Court

- Against the order of Appellate Tribunal (Principal Benches)

  where any of the disputed point is Place of Supply
- Against an order passed by High Court where High Court certifies to be a fit one for appeal to the Supreme court

SEC 119

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 of the Appellate Tribunal under section 113(1) or an order passed by the State Benches of the Appellate Tribunal under section 113(1) 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.

TITBITS OF APPEALS

- No Pre deposit in case of Refund Appeals.
- If Online Order then Online Appeal, if manual Order then Manual Appeal.
- No specific Format of Memorandum of Cross Objections in case of First Appellate Authority.
- Difference in Income Tax and GST Appeals 1) Detailed Appeal Drafting in GST 2) First Appeal can be by Department in GST 3) No Pre Deposit waiver in GST 4) Max 3 adjournments 5) Directory time period of 1 year for disposal. 6)1st Appeal may like to JC/Addl/ Comm, as per order passing authority.
- **Appeal be made to both CGST & SGST authorities? –No** As per the GST Act, CGST & SGST/UTGST officers are both empowered to pass orders. As per the Act, an order passed under CGST will also be deemed to apply to SGST. If an officer under CGST has passed an order, any appeal /review/revision/ rectification against the order will lie only with the officers of CGST, vice a versa for SGST.
- **In case of transfer of appellate authority**
- **Same officer to hear and decide the case** The requirement of fair hearing involves decision being taken by the officer who heard the case. If after hearing, that particular officer is transferred, normal rule would be that the successor must hear the arguments afresh before he could pass an order. **Laxmi Devi v. State of Bihar, (2015) 10 SCC 241.**So Stringent is this right that it mandates that **the person who heard and considered the objections can alone decide them**; and not even his successor is competent to do so even on the basis of the materials collected by his predecessor

What if Appeal is Filed before Wrong Authority?

There are various **cases where appeals are filed before incorrect Authorities**. Reason for such incorrect filing could be bonafide mistake or it could also be due to belief that appeals lies before the incorrect authority.

In these cases, courts in various cases have ruled in favour of assessee and allowed filing of appeals even they are time barred but original appeal was filed within due time.

Government of India **(Order-in-Revision NO. 14-15 of 1981 Dated 17-01-1981)** has earlier recommended that **if an appeal has been filed before wrong authority then Appellate Authority should have remanded the case to correct authority rather than dismissing the appeal**

Defect memo issued against filed appeal, adequate opportunity for rectifying the same would be given.

JEM EXPORTER, VERSUS UNION OF INDIA, STATE OF MAHARASHTRA, COMMISSIONER OF CGST & C. EX, APPEAL-I, JOINT COMMISSIONER APPEAL-I, CGST & CX. MUMBAI, DEPUTY COMMISSIONER MUMBAI, ASSISTANT COMMISSIONER, SUPERINTENDENT, MUMBAI In view of above, we pass the following order☹*a) The Order in Appeal dated 17th June 2022 is set aside and restored to the file of the Commissioner (Appeal).*

(b) Commissioner (Appeal) will issue a defect memo to the Petitioner pointing out the procedural defect in the appeal and would give adequate opportunity for rectifying the same.

(c) If the Petitioner rectifies the defect specified in the defect memo, then the Commissioner (Appeal) will pass a fresh order disposing of the appeal on merits after considering all the submissions made, including the contention of correct procedure having not followed by the adjudicating authority.

(d) Petition is disposed of in terms of the above order. No order as to costs.

(e) All contentions of the parties are kept open.

GST APPELLATE TRIBUNAL (GSTAT)

(FINAL FACT FINDING AUTHORITY)
QUASI JUDICIAL AUTHORITY

Goods and Service Tax Appellate Tribunal (GSTAT)

Need of the hour

Significance of GSTAT

- the second forum of appeal, where orders of the first Appellate Authority and Revisional Authority will be challenged.

- Disputes regarding levy, valuation, classification, eligibility of credit (including transitional credits) and refunds are increasing
- Departmental audit, investigation, enquiry and scrutiny leading to increased disputes.

Increasing trend in GST disputes

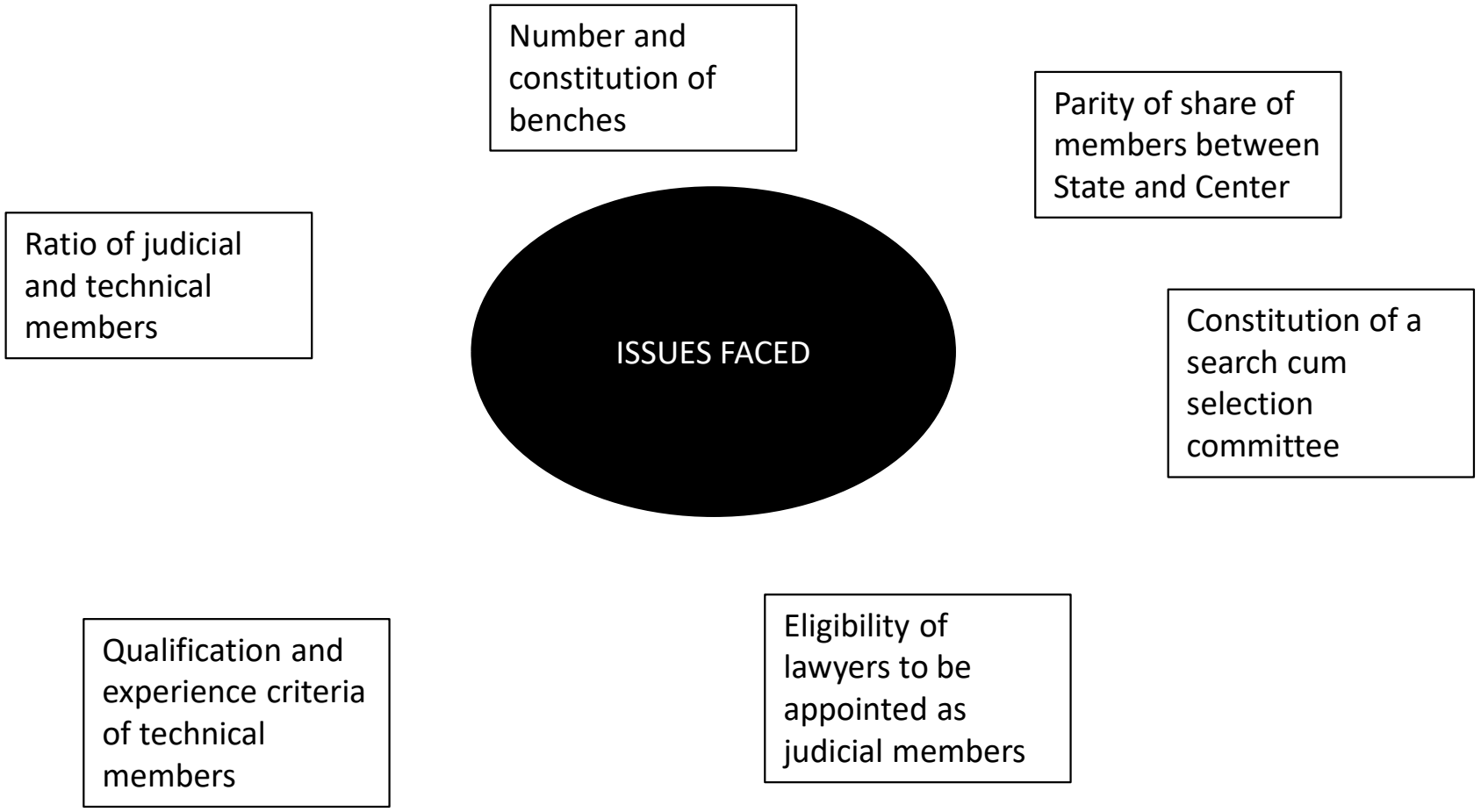
Hardships faced by taxpayers

- Aggrieved taxpayer has to approach High Court through writ, post receipt of an order from an Appellate Authority or paying their GST demands under protest.
- Due to pending backlog, High Courts are unable to dispose off the matters expeditiously.

- Almost 6 years of implementation of GST, discussions around setting up GSTAT are still in progress and marks a 20% growth from the number of such pending cases as on march 31st this year.
- Expected to see that the operation of the GST tribunal will reduce litigation as in the last two years alone, such appeals more than doubled from 5,499 in 2020-21 to 11,899 cases in 2022-23.
- Expected that the GSTAT web portal will also depict the full trail of cases in a timely and effective manner on a real-time basis.

GSTAT –pressing priority

Issues faced in constitution of GSTAT



DELAYED DUE TO PENDING LITIGATIONS

Section 109 (1)

(1) The Government shall establish 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.

Section 109 (2)

(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).

CONSTITUTION OF THE APPELATE TRIBUNAL

- PRINCIPAL BENCH
- STATE BENCH

Section 109 (3) & (4)

(3) The Government shall 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).

CONSTITUTION OF PRINCIPAL BENCH

- PRESIDENT
- JUDICIAL MEMBER
- TECHNICAL MEMBER
  - CENTRE
  - STATE

PRINCIPAL BENCH SHALL BE LOCATED IN NEW DELHI

CONSTITUTION OF STATE BENCHES

- TWO Judicial Member
- Technical Member Centre
- Technical Member State

LOCATION OF STATE BENCHES

NOTIFICATION dated [14-09-2023]

S.O. 4073(E).—In exercise of the powers conferred by the sub-section 4 of section 109 of the Central Goods and Services Tax Act, 2017 (12 of 2017) the Central Government, on the recommendation of the Goods and Services Tax Council, hereby constitutes the number of **State Benches** of the Goods and Services Tax Appellate Tribunal as follows:-

S.No.	State Name	No. of Benches	Location
(1)	(2)	(3)	(4)
1	Andhra Pradesh	1	Vishakhapatnam and Vijayawada
2	Bihar	1	Patna
3	Chhattisgarh	1	Raipur and Bilaspur
4	Delhi	1	Delhi
5	Gujarat	2	Ahmedabad, Surat and Rajkot
6	Dadra and Nagar Haveli and Daman and Diu		
7	Haryana	1	Gurugram and Hissar
8	Himachal Pradesh	1	Shimla
9	Jammu and Kashmir	1	Jammu and Srinagar
10	Ladakh		
11	Jharkhand	1	Ranchi
12	Karnataka	2	Bengaluru
13	Kerala	1	Ernakulum and Trivandrum
14	Lakshadweep		
15	Madhya Pradesh	1	Bhopal
16	Goa	3	Mumbai, Pune, Thane, Nagpur, Aurangabad and Panaji
17	Maharashtra		
18	Odisha	1	Cuttack
19	Punjab	1	Chandigarh and Jalandhar
20	Chandigarh		
21	Rajasthan	2	Jaipur and Jodhpur
22	Tamil Nadu	2	Chennai, Madurai, Coimbatore and Puducherry
23	Puducherry		
24	Telangana	1	Hyderabad
25	Uttar Pradesh	3	Lucknow, Varanasi, Ghaziabad, Agra and Prayagraj
26	Uttarakhand	1	Dehradun
27	Andaman and Nicobar Islands	2	Kolkata
28	Sikkim		
29	West Bengal		
30	Arunachal Pradesh	1	Guwahati Aizawl(Circuit) Agartala(Circuit) Kohima (Circuit)
31	Assam		
32	Manipur		
33	Meghalaya		
34	Mizoram		
35	Nagaland		
36	Tripura		

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 31st July, 2024

S.O. 3048(E).—In exercise of the powers conferred by the sub-sections (1), (3) and (4) of section 109 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and in supersession of the Ministry of Finance, Department of Revenue's notification numbers S.O.1(E), published in the Gazette of India, Extraordinary, Part II, Section 3, Subsection
(ii), dated the 29th December, 2023, and S.O.4073(E), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 14th September, 2023 except as respect things done or omitted to be done before such supersession, the Central Government, on the recommendation of the Goods and Services Tax Council, hereby-

(i) establishes the Goods and Services Tax Appellate Tribunal (GSTAT), with effect from the 1st day of September, 2023;

(ii) constitutes the Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi; and

(iii) constitutes the number of State Benches of the Goods and Services Tax Appellate Tribunal as specified in column (3) of the table below, with respect to the State specified in the corresponding entry in column (2) of the said table, at the location specified in corresponding entry in column (4) thereof, with the Sitting or Circuit Bench specified in column (5) thereof, namely: —

Sl.No.	State Name	No. of Benches	Location	Sitting / Circuit
(1)	(2)	(3)	(4)	(5)
1	Andhra Pradesh	1	Vijayawada	Vishakhapatnam
2	Bihar	1	Patna	-
3	Chhattisgarh	1	Raipur	-
4	Delhi	1	Delhi	-
5	Gujarat	2	Ahmedabad	-
6	Dadra and Nagar Haveli and Daman and Diu		Surat	Rajkot
7	Haryana	1	Gurugram	Hissar
8	Himachal Pradesh	1	Shimla	-
9	Jammu and Kashmir	1	Jammu	Srinagar
10	Ladakh			
11	Jharkhand	1	Ranchi	-
12	Karnataka	2	Bengaluru	-
13	Kerala	1	Ernakulum	Thiruvananthapuram
14	Lakshadweep			
15	Madhya Pradesh	1	Bhopal	-
16	Goa	3	Mumbai	Panaji (Circuit)
17	Maharashtra		Pune	Thane
			Nagpur	Chhatrapati Sambhajinagar
18	Odisha	1	Cuttack	-
19	Punjab	1	Jalandhar	Chandigarh
20	Chandigarh			
21	Rajasthan	2	Jaipur	-
			Jodhpur	-
22	Tamil Nadu	2	Chennai	Puducherry (Circuit)
23	Puducherry		Madurai	Coimbatore
24	Telangana	1	Hyderabad	-

25	Uttar Pradesh	3	Lucknow	-
			Varanasi	Prayagraj
			Ghaziabad	Agra
26	Uttarakhand	1	Dehradun	-
27	Andaman and Nicobar Islands	2	Kolkata	-
28	Sikkim			
29	West Bengal			
30	Arunachal Pradesh	1	Guwahati	Aizawl (Circuit) Agartala (Circuit) Kohima (Circuit)
31	Assam			
32	Manipur			
33	Meghalaya			
34	Mizoram			
35	Nagaland			
36	Tripura			

Explanations —

(i) Locations shown as 'Circuit' shall be operational in such manner as the President may order, depending upon the number of appeals filed by suppliers in the respective States/jurisdiction;

(ii) the additional sitting associated with the Bench shall be operated by one Judicial Member and one Technical Member

Section 109 (5)

(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 (6)

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

Section 109 (7)

Inserted vide Finance Act,23 from 1-8-2023

(7) The senior-most Judicial Member within the State Benches 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.

Section 109 (8)

(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**
- **does not involve any question of law**

with the approval of the President

May be heard by a single member

In all other cases

shall be heard together by one Judicial Member and one Technical Member.

BUDGET 2023 changes applicable w.e.f 01-08-2023

Section 109

Composition of Appellate Tribunal

PRINCIPAL BENCH At New Delhi				STATE BENCH			
President	JM	TM (CENTER)	TM (STATE)	JM	JM	TM(CENTER)	TM(STATE)

MEMORANDUM OF CROSS OBJECTIONS CAN BE FILED **within 45 days from the receipt of notice** in **Form GST APL-06** (Condonation-45days).

Such Memorandum shall be signed in the manner specified in rule 26.

FEES =1000/- (For every 1 lakh of tax, penalty etc) max 25000/- per act i.e (Rs. 2000 max Rs. 50000) No fee for Rectification.

SUPREME COURT

HIGH COURT

SUPREME COURT

- PIL filed to SC for its constitution
- Tribunal can remand back
- Senior Most Judicial Member within the State Benches as notified shall act as Vice President of such State Benches

Jurisdiction of Members AGAINST orders passed by APPELLATE AUTHORITY or THE REVISIONAL AUTHORITY

Section 109

Matters to be heard by	Circumstances
Principal Bench	Case, wherein one of the matters involved relates to the **place of supply**
Single Member	• Where tax/ input tax credit involved or amount of fine/ fee/ penalty determined in the order appealed against **doesn't exceed INR 50 Lakhs**; AND • The matter **doesn't involve any question of law.**
One Judicial Member and One	All other cases

Notification dated [29-12-2023]

S.O. 1(E); The Central Government, on the recommendation of the Goods and Services Tax Council, **hereby constitutes the Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi**, with effect from the date of publication of this notification in the official Gazette.

NOTIFICATION dated [14-09-2023]

S.O. 4073(E).—In exercise of the powers conferred by the sub-section 4 of section 109 of the Central Goods and Services Tax Act, 2017 (12 of 2017) the Central Government, on the recommendation of the Goods and Services Tax Council, **hereby constitutes the number of State Benches of the Goods and Services Tax Appellate Tribunal as follows:-**

Section 109 (9)

(9) If, after hearing the case, the Members differ in their opinion on any point or points, the President shall refer such case for hearing,—

where the appeal was originally heard by members of State Bench

to another Member of a State Bench within the State

If not available

a Member of a State Bench in another State

where the appeal was originally heard by members of Principal Bench

to another Member of a Principal Bench

If not available

to a Member of any State Bench

For such points—Decided on the MAJORITY OPINION including the opinion of the Members who first heard the case.

Section 109 (10)

(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

Section 109 (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 110

President and members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.

SEC 110(1)

A person shall not be qualified for appointment as—

PRESIDENT

UNLESSS HE HAS BEEN:

- *Judge of the Supreme Court*

OR

- *Chief Justice of a High Court*

JUDICIAL MEMBER

UNLESSS HE HAS BEEN:

- *Judge of the High Court*

OR

- *for a **combined period of 10 years**, been a **District Judge or an Additional District Judge***

OR

- ***an advocate** for **10 years** with **substantial experience** in litigation in matters relating to indirect taxes in the Appellate Tribunal, Customs, Excise and Service Tax Appellate Tribunal, State VAT Tribunal, by whatever name called, High Court or Supreme Court*

Inserted As per Central Goods and Services Tax (Second Amendment) Act, 2023. Dated 28-12-2023

TECHNICAL MEMBER (CENTRE)

UNLESSS HE HAS BEEN **A MEMBER** OF:

- *The Indian Revenue (Customs and Indirect Taxes) Service, Group A,*

OR

- *All **India Service with at least 3 years** of **experience** in the **administration of an existing law** or GST in the CG, **and***
- *has **completed at least 25 years** of **service in Group A**;*

TECHNICAL MEMBER (STATE)

UNLESSS HE HAS BEEN **AN OFFICER** OF:

- *the State Government*

or

- *All India Service*

***not below** the rank of:*

i. *Additional Commissioner of VAT **or***
ii. *the State GST **or***
iii. *the First Appellate Authority*

***And** has completed **25 years** of service in Group A **or** with at least **3 years** of*

Provided that:

*the SG may, on the recommendations of the Council, by notification, relax the **requirement of completion of 25 years of service in Group A, or equivalent**, in respect of officers of such State where **no person has completed 25 years** years of service in Group A, or equivalent, **but has completed 25 years years of service in the Government**, subject to such conditions, and till such period, as may be specified in the notification.*

*experience in the administration of an existing law **or** GST **or** in the field of finance and taxation in the State Government*

Inserted As per Central Goods and Services Tax (Second Amendment) Act, 2023. Dated 28-12-2023

Provided that:

*that a person who **has not completed the age of fifty years shall not be eligible for appointment as the President or Member***

SEC 110(2)

President	Judicial Member	Technical Member (Centre)	Technical Member (State)

Shall be **appointed** *or **re-appointed** by* → *the **Government*** → *on the **recommendations of a Search-cum-Selection Committee** constituted under sub-section (4):*

Provided that:

*in the event of the **occurrence of any vacancy** in the office of the President by **reason of his death, resignation otherwise**, the **Judicial Member or, in his absence, the senior-most Technical Member of the Principal Bench shall act as the President until the date on which a new President, appointed** in accordance with the provisions of this Act to fill such vacancy, enters upon his office:*

Provided further that:

*where the **President is unable to discharge his functions** owing to absence, illness or any other cause,, the **Judicial Member or, in his absence, the senior-most Technical Member of the Principal Bench shall discharge the functions of the President** until the date on which the President resumes his duties*

SEC 110(3)

*While making **selection for Technical Member (State) of a State Bench**, **first preference shall be given to officers who have worked in the State Government of the State** to which the jurisdiction of the Bench extends.*

SEC 110(4)

*(a)The **Search-cum-Selection Committee** for **Technical Member (State)** of a State Bench shall **consist** of the following members, namely:—*

- *the **Chief Justice of the High Court** in whose jurisdiction the State Bench is located, **to be the Chairperson of the Committee**;*
- *the **senior-most Judicial Member in the State, and where no Judicial Member is available, a retired Judge of the High Court** in whose jurisdiction the State Bench is located; as may be nominated by the Chief Justice of such High Court;*
- ***Chief Secretary of the State** in which the State Bench is located;*
- ***one Additional Chief Secretary or Principal Secretary or Secretary of the State** in which the State Bench is located, as may be nominated by such State Government, not in-charge of the Department responsible for administration of State tax; and*
- ***Additional Chief Secretary or Principal Secretary or Secretary of the Department** responsible for administration of State tax, of the State in which the State Bench is located — **Member Secretary;***

*(b)The **Search-cum-Selection Committee** for all other cases shall consist of the following members, namely:—*

- *the Chief Justice of the High Court*

  or

- *Judge of Supreme Court*

to be the Chairperson of the Committee;

Secretary of the Central Government nominated by the Cabinet Secretary ***to be the member.***

Chief Secretary of a State to be nominated by the Council ***to be the member.***

Secretary of the Department of Revenue in the Ministry of Finance of the Central Government — ***to be the Member Secretary***

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 Supreme Court or a retired Chief Justice of a High Court nominated by the Chief Justice of India;

SEC 110(5)

The Chairperson shall have the casting vote and the Member Secretary shall not have a vote.

SEC 110(6)

Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the Committee shall recommend a panel of two names for appointment or re-appointment to the post of the President or a Member, as the case may be.

SEC 110(7)

No appointment or re-appointment of the Members of the Appellate Tribunal shall be invalid merely by reason of any vacancy or defect in the constitution of the Search-cum-Selection Committee.

SEC 110(8)

Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the salary of the President and the Members of the Appellate Tribunal shall be such as may be prescribed and their allowances and other terms and conditions of service shall be the same as applicable to Central Government officers carrying the same pay:

Provided that:

Provided that neither the salary and allowances nor other terms and conditions of service of the President of Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment:

Provided further that:

if the President or Member takes a house on rent, he may be reimbursed a house rent higher than the house rent allowance as are admissible to a Central Government officer holding the post carrying the same pay, subject to such limitations and conditions as may be prescribed.

SEC 110(9)

Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the President of the Appellate Tribunal shall hold office:

- for a term of four years from the date on which he enters upon his office, or
- until the age of ~~sixty-seven years, whichever is earlier and shall be eligible for reappointment for a period not exceeding two years~~ seventy years whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years subject to the age-limit specified above

As per Central Goods and Services Tax (Second Amendment) Act, 2023. Dated 28-12-2023

SEC 110(10)

Notwithstanding anything contained in any judgment, order, or decree of any court or any law for the time being in force, the Judicial Member, Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office:

- for a term of four years from the date on which he enters upon his office, or
- until he attains the age of ~~sixty-five years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years~~ sixty-seven years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding two years subject to the age-limit specified above

As per Central Goods and Services Tax (Second Amendment) Act, 2023. Dated 28-12-2023

SEC 110(11)

The President or any Member may, by notice in writing under his hand addressed to the Government, resign from his office:

Provided that:

the President or Member shall continue to hold office until:

- ❖ the expiry of three months from the date of receipt of such notice by the Government or
- ❖ until a person duly appointed as his successor enters upon his office or
- ❖ until the expiry of his term of office,

whichever is the earliest.

SEC 110(12)

The Government may, on the recommendations of the Search-cum-Selection Committee, remove from the office President or a Member, who

- has been adjudged an insolvent
- has been convicted of an offence which involves moral turpitude;
- has become physically or mentally incapable of acting as such President or Member
- has acquired such financial or other interest as is likely to affect prejudicially his functions as such President or Member;
- has so abused his position as to render his continuance in office prejudicial to the public interest

Provided that:

that the President or the Member shall not be removed ~~on any of the~~ grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

SEC 110(13)

The Government, on the recommendations of the Search-cum-Selection Committee, may suspend from office, the President or a Judicial or Technical Member in respect of whom proceedings for removal have been initiated under sub-section (12).

SEC 110(14)

Subject to the provisions of article 220 of the Constitution, the President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the Principal Bench or the State Bench in which he was the President or, as the case may be, a Member.

APPOINTMENT OF PRESIDENT, TECHNICAL MEMBER (CENTRE/ STATE) AND JUDICIAL MEMBER OF GSTAT

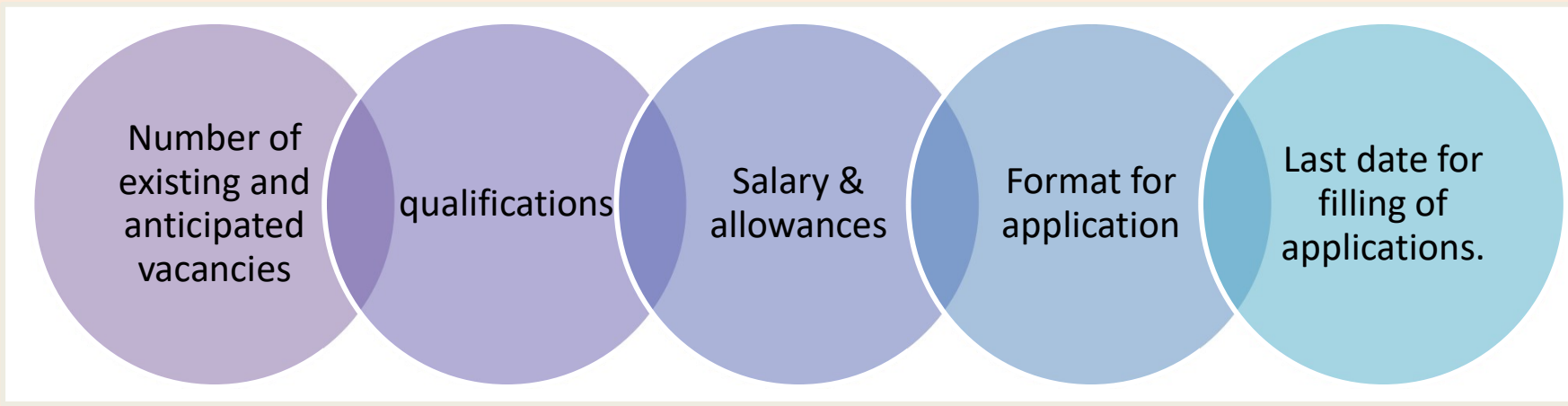
❑ **NOTIFICATION G.S.R.793(E) [F. NO A-50050/69/2023-CESTAT-DOR], DATED 25-10-2023**

GSTAT RULES, 2023

SELECTION CRITERIA FOR POSTS

❑ **GSTAT RULES, 2023 issued by ministry of finance publication in the Official Gazette on 26.10.2023**

1.The committee may issue **VACANCY CIRCULAR** through **member-secretary**, specifying details of the posts proposed to be filled by members, including:



after making such modifications as may be deemed fit by the Committee.

2. It shall scrutinise or cause to be scrutinised, every application received in response to circular, against the qualifications and may shortlist such number of eligible candidates for personal interaction as it may deem fit.

3. For the post of president, committee may either:

- Issue a Vacancy circular
- Call for applications

OR

- search for suitable persons eligible for appointment
- make an assessment for selection to the post of President.

4. It shall make its recommendations based on the overall assessment of eligible candidates including assessment through the personal interaction after taking into account :

Suitability
record of past performance
integrity as well as adjudicating and experience

Shall recommend a **panel of 2 names for every post** for which selection is being done in accordance with the provisions of sub - section (6) of section 110 of the Act.

SELECTION CRITERIA FOR RE-APPOINTMENT

An application for re-appointment shall be considered in the **same manner as that for the original appointment**, along with the applications of all other persons in response to the vacancy circular.

While making its assessment for suitability to a post, **the Committee shall give additional weightage to persons seeking re-appointment on the basis of their experience in the Tribunal** and while doing so, shall take into account, the performance of the person while working as a President or Member in the Tribunal

Rk2

POWERS OF PRESIDENT

Shall exercise the powers of head of the department for the purpose of:

- Delegation of Financial Power Rules, 1978;
- General Financial Rules, 2017;
- Fundamental Rules and Supplementary Rules;
- Central Civil Services (Classification, Control and Appeal) Rules, 1965

POWERS OF VICE- PRESIDENT

Shall exercise the powers of the President provided under section 114 of the Act for the relevant State Benches for the purpose of:

- allocation of appeals amongst members within a bench under his jurisdiction;

- deciding the appeals to be heard by Single Member as per provisions of the Act;

- transfer of appeals amongst the State Benches within his jurisdiction;

- refer cases under clause (*a*) of sub-section (9) of section 109 of the Act to a Member in a State Bench within his jurisdiction;

- such other administrative and financial powers as may be assigned by the President by a general or special order.;

Slide 120

Rk2 not clear

Rohit kapoor, 12-02-2024

SEC 111(1)

(1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, 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)

(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:-

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

SEC 111(3)

(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)

PUNISHMENT FOR FALSE EVIDENCE

Using evidence known to be false

(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.

Intentional insult or interruption to public servant sitting in judicial proceeding.

SEC 112

Appeal to Appellate Tribunal

Order of appellate authority

Order of review authority

SEC 112(1)

Any person aggrieved by an order passed against him under **section 107** or **section 108** of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act **may appeal to the Appellate Tribunal** against such order **within three months** from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

Amended vide Clause 139 and 150 of Finance Bill, 2024

RULE 110, CGST RULES 2017

Appeal To Appellate Tribunal

Form for filling appeal

(1) An appeal to the Appellate Tribunal under sub-section (1) of section 112 shall be filed along with the relevant documents either electronically or otherwise as may be notified by the Registrar, in FORM GST APL-05, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule 26.

(4) A certified copy of the decision or order appealed against along with fees as specified in sub-rule (5) shall be submitted to the Registrar within seven days of the filing of the appeal under sub-rule (1) and a final acknowledgement, indicating the appeal number shall be issued thereafter in FORM GST APL-02 by the Registrar:

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-05, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

Explanation.—For the purposes of this rule, the appeal shall be treated as filed only when the final acknowledgement indicating the appeal number is issued.

Q: Whether any fee shall have to be paid for filling appeals or application before the tribunal?

(5)The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of 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 in the order appealed against, subject to a maximum of twenty five thousand rupees.

RULE 26

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[1] by the Board in this behalf.

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 fifty thousand rupees.**

SEC 112(3)

Amended vide Clause 139 and 150 of Finance Bill, 2024

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 State Goods and Services Tax Act or the Union Territory Goods and Services Tax 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 **within six months** from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

RULE 111

Application to the Appellate Tribunal

(1) An application to the Appellate Tribunal under sub-section (3) of section 112 shall be made electronically or otherwise, in FORM GST APL-07, along with the relevant documents on the common portal.

(2) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the application under sub-rule (1) and an appeal number shall be generated by the Registrar.

Issuance of Removal of Difficulties Order so as to extend the last date for filing of appeals before the GST Appellate Tribunal against orders of Appellate Authority on account of non-constitution of benches of the Appellate Tribunal [ROD NO.09/2019-CT]

For the purpose of filing the appeal or application as referred to in sub- section (1) or sub-section (3) of section 112 of the said Act, as the case may be, the Appellate Tribunal and its Benches are yet to be constituted in many States and Union territories under section 109 of the said Act as a result whereof, the said appeal or application could not be filed within the time limit specified in the said sub-sections, and because of that, certain difficulties have arisen in giving effect to the provisions of the said section

Central government exercise powers conferred by sec 172, CGST Act,2017

On recommendation of council clarified that:

Calculation period :

In case of 3 months starts from the later of the following dates:

In case of 6 months starts from the later of the following dates:

Date of communication of order.

or

Date on which the President or the State President, of the Appellate Tribunal after its constitution under section 109, enters office;

Amendment introduced vide Finance Bill, 2024

CIRCULAR 132/2/2020 Dated: 18-03-2020

The appeal against the order passed by appellate authority under Section 107 of the CGST Act lies with appellate tribunal. Relevant provisions for the same is mentioned in the Section 112 of the CGST Act which reads as follows: –

"112 (1) Any person aggrieved by an order passed against him under **section 107** or **section 108** of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal."

4.2 The appellate tribunal has not been constituted in view of the order by **Madras High Court in case of Revenue Bar Assn. v. Union of India** and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued the **Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019.** It has been provided through the said Order 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**

4.3 Hence**, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters office**. The appellate authority while passing order may mention in the preamble that **appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office.** Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

SEC 112(4)

Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such 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).

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 forty-five 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).

RULE 110

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112 shall be filed either electronically or otherwise as may be notified by the Registrar, in **FORM GST APL-06**.

Amended vide Clause 139 and 150 of Finance Bill, 2024

SEC 112(6)

The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections **within forty-five days** after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

SEC 112(7)

An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.

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 twenty per cent 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 fifty crore rupees,** in relation to which the appeal has been filed.

Inserted by cgst (amendment) act, 2018 w.e.f. 01-02-2019

FURTHER, AMENDED VIDE CLAUSE 139 AND 150 OF FINANCE BILL, 2024

Amended vide Clause 139 and 150 of FB, 2024

SECTION 112 – APPEALS TO APPELLATE TRIBUNAL

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal **or the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act, whichever is later**. w.e.f 01.08.2024

.....

(3), 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 State Goods and Services Tax Act or the Union Territory Goods and Services Tax 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 within six months from the date on which the said order has been **passed or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later**, for determination of such points arising out of the said order as may be specified by the Commissioner in w.e.f 01.08.2024

....

(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1), **or permit the filing of an application within three months after the expiry of the period referred to in sub-section (3)** or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

Amended vide Clause 139 and 150 of FB, 2024

SECTION 112 – APPEALS TO APPELLATE TRIBUNAL (Cont.)

(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 **ten per cent**. 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 **twenty crore** rupees, in relation to which the appeal has been filed.

Substituted in place of Twenty Percent

Substituted in place of Fifty Crore

- **Empowers Government to notify the date for filing appeal before the Appellate Tribunal and provide a revised time limit for filing appeals or application before the Appellate Tribunal. The said amendment is made effective from the 1st day of August, 2024**
- **An Enabling provision which enables the Appellate Tribunal to admit appeals by the department within 3 MONTHS after the expiry of the specified time limit of 6 months.**
- **Reduction of Maximum amount of Pre-Deposit:**
  - **20% to 10% ---------- in case of Tax in Dispute**
  - **Maximum amount of Pre-Deposit from Rs. 50 Crores to Rs. 20 Crore**

RULE 89(2)

The application under sub-rule (1) shall be accompanied by any of the following documentary evidences in Annexure 1 in FORM GST RFD-01, as applicable, to establish that a refund is due to the applicant, namely:—

(a) The reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;

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.

SEC 112(10)

Every application made before the Appellate Tribunal,

(a) in an appeal for rectification of error or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by such **fees** as may be prescribed.

RULE 110

(6) There shall be **no fee** for application made before the Appellate Tribunal **for rectification of errors** referred to in sub-section (10) of section 112

RULE 112- Production of additional evidences

Additional Evidence means an evidence other than the evidence produced by him during the proceeding before Adjudicating Authority or the Appellate Authority or Appellate Tribunal

The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary ***except in following :-***

Contd.

EXCEPTIONS :
i.e. Cases where Additional Evidence can be produced

where the adjudicating authority or the Appellate Authority has refused to admit evidence which ought to have been admitted

where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or the Appellate Authority

where the appellant was prevented by sufficient cause from producing before the adjudicating authority or the Appellate Authority any evidence which is relevant to any ground of appeal

where the adjudicating authority or the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) **No evidence shall be admitted** under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal **records in writing the reasons for its admission**.

(3) The Appellate Authority or the Appellate Tribunal **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;

b) to **produce any evidence or any witness in rebuttal** of the evidence produced by the appellant under sub-rule (1)

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

SUBJECTIVE

Reasons of condonation of delay in filling of appeal

Each and Every day of delay needs to be explained

1. **Search operation conducted** on premises by some other agency under such pressure appeal cannot be filed on time.

2. Due to some **technical glitch in downloading order from portal**, appeal cannot be file on time

3. **Signatory/Authorized person** of appeal **not available**.

4. **Order not communicated .Order received on old mail considered to be non communicated** in case department was informed to change such mail.

Obtain an affidavit to substantiate every day delay in filling of appeal.

If **a person** after filing appeal **dies**, then **re-submission of appeal form to be done**.

Minor mistakes cannot lead to rejections, file rectified Appeal Form

on e-stamp paper bearing certificate no. IN-PB83679388955388W dated 07-02-2014

AFFIDAVIT

I do hereby solemnly affirm and declare as under: -

1. That I am a resident of the aforesaid address.

2. That I have been practicing as an advocate since 23 years.

3. That I am looking after the legal matters in the case of Sh. Ashish Sharma

4. That the order u/s 143(3) r.w.s 147 was passed by the AO in the case of Sh. Ashish Sharma on 27.09.2017.

5. That an appeal against the order of the AO dated 27.09.2017 was filed before the CIT(A) who confirmed the addition vide order passed u/s 250(6) dated 30.10.2023 and all the documents were lying in my possession.

6. That my father was hospitalized and as such, I could not hand over the documents for filing of appeal to the Authorized representatives ; who reside in Amritsar.

7. That the delay in filing of appeal with the Hon'ble Income Tax Appellate Tribunal (ITAT) is only due to my inability to transfer the documents to the Authorized representatives.

8. That I am a law-abiding citizen and the [illegible] caused was completely unintentional.

SATISH KUMAR ANAND Advocate M.A.LLB. Approved NOTARY By Punjab Govt. INDIA 9/11/2016-4 JUDL (I) AMRITSAR

Deponent

Verification

I hereby declare that the contents of the above affidavit are true and correct to the best of my knowledge and nothing has been concealed therein.

ATTESTED as IDENTIFIED
Satish Kumar Anand Notary
* Amritsar *
12 FEB 2024

Deponent

Place: Amritsar
Dated:

Section 113 (1) and(6)

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 Appellate Authority, or the Revisional Authority 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. **The order of the Appellate Tribunal shall be final and binding on all the parties, save as otherwise provided in Section 117 or Section 118.**

Appeal to high court

Appeal to supreme court

Section 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 but not more than 3 times**.

Section 113 (3)

RECTIFICATION ORDER BY APPELLATE TRIBUNAL

The Appellate Tribunal may **amend** any order passed by it so as to **rectify any error apparent on the face of the record**,

- if such **error is noticed by it on its own accord**,
- or is brought to its **notice by the Commissioner [CGST/SGST/UT GST]**

to the appeal within a period of three months from the date of the order

Section 113 (4)

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**.

Recommendatory not Mandatory

Amended vide Clause 144B of FB, 2024

SECTION 171 – ANTIPROFITEERING MEASURE

Insertion of Explanation 2 after Explanation 1 after Sub-Section (3A) of Section 171

Explanation 1 -For the purposes of this section, the expression "profiteered" shall mean the amount determined on account of not passing the benefit of reduction in rate of tax on supply of goods or services or both or the benefit of input tax credit to the recipient by way of commensurate reduction in the price of the goods or services or both.

Explanation 2- For the purposes of this section, the expression "Authority" shall include the "Appellate Tribunal".

Apart from the Competition Commission of India, the Appellate Tribunal have also been included as an authority for dealing with Anti-profiteering cases

Authority ⟷ (INCLUDED) **Appellate Tribunal**

Section 117

APPEAL TO HIGH COURT

(1) Any person **aggrieved by any order passed by the State Bench 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.**

(2) Within in **180 days** in **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.

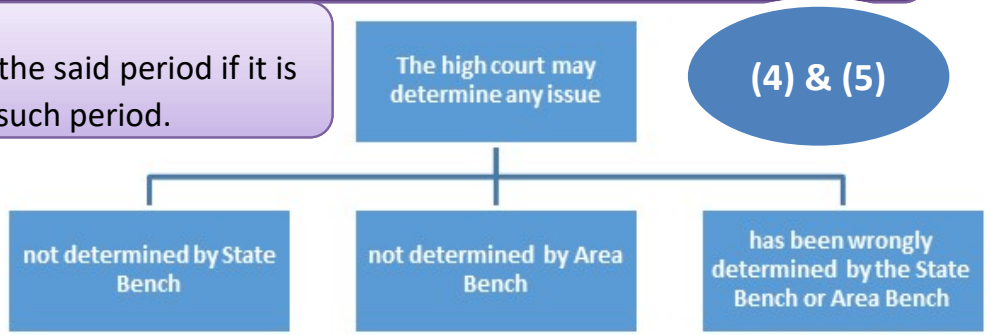


Illustration 1:

In an order dated 20.06.2021 issued to the M/s TMA Pvt Ltd, the Appellate Tribunal has confirmed a tax demand of Rs. 3,35,000. Can M/s TMA Pvt Ltd. file the appeal before the Hon'ble High Court?

Solution:

Section 117 (1) of the CGST Act read with the **rule 114** of the CGST rules, states that the any person aggrieved by any order passed by the **State Bench** of the Appellate Tribunal may file appeal to the Hon'ble High Court if is involves **a substantial question of law**. In the present case, there is no substantial question of law involve so M/s TMA Pvt Ltd can not go for appeal before the Hon'ble High Court.

SUMMARY OF FORMS USED IN APPEALS

S. No.	FORM No.	CONTENT	Time Limit
1	GST APL-01	Appeal to Appellate Authority by Taxpayer	Within 3 months from the date of receipt of order
2	GST APL-02	Acknowledgement of submission of appeal	After filing of certified copy of the decision or order
3	GST APL-03	Application to the Appellate Authority by Department under sub-section (2) of section 107	Within 6 months from date of receipt of order
4	GST APL-04	Summary of the demand after the issue of order by the Appellate Authority, Tribunal or Court [FINAL DEMAND CONFIRMED]	Maximum within 1 year
5	GST APL-05	Appeal to the Appellate Tribunal (electronically or otherwise)	Within 3 months from date of receipt of order
6	GST APL-06	Memorandum of Cross-objections before the Appellate Tribunal	Within 45 days
7	GST APL-07	Application to the Appellate Tribunal under sub-section (3) of section 112	Within 6 months from date of receipt of order
8	GST APL-08	Appeal to the High Court under section 117	Within 180 days from the date of receipt of order appealed against

Appeal filed by any aggrieved person to Appellate Tribunal

Section 112(1)

Form GST APL-05
[See rule 110(1)]
Appeal to the Appellate Tribunal

1.	GSTIN/Temporary ID/UIN -		
2.	Name of the appellant -		
3.	Address of the appellant -		
4.	Order appealed against -	Number -	Date-
5.	Name and Address of the Authority passing the order appealed against -		
6.	Date of communication of the order appealed against -		
7.	Name of the representative -		
8.	Details of the case under dispute :		
	(i) Brief issue of the case under dispute		
	(ii) Description and classification of goods/services in dispute		
	(iii) Period of dispute		
	(iv) Amount under dispute :		

Description	Central tax	State/UT tax	Integrated tax	Cess
(a) Tax/Cess				
(b) Interest				
(c) Penalty				
(d) Fees				
(e) Other charges				

	(v) Market value of seized goods	
9.	Whether the appellant wishes to be heard in person?	
10.	Statement of facts	
11.	Grounds of appeal	
12.	Prayer	
13.	Details of demand created, disputed and admitted	

Particulars of demand	Particulars		Central tax	State/UT tax	Integrated Tax	Cess	Total amount	
	Amount demanded/ rejected >, if any (A)	(a) Tax/Cess					<total>	<total>
		(b) Interest					<total>	
		(c) Penalty					<total>	
		(d) Fees					<total>	
		(e) Other charges					<total>	
	Amount under dispute (B)	(a) Tax/Cess					<total>	<total>
		(b) Interest					<total>	
		(c) Penalty					<total>	
		(d) Fees					<total>	
		(e) Other charges					<total>	
	Amount admitted (C)	(a) Tax/Cess					<total>	<total>
		(b) Interest					<total>	
		(c) Penalty					<total>	
		(d) Fees					<total>	
		(e) Other charges					<total>	

14. Details of payment of admitted amount and pre-deposit :

(a) Details of amount payable :

Particulars			Central tax	State/UT tax	Integrated tax	Cess	Total amount	
	(a) Admitted amount	Tax/Cess					<total>	<total>
		Interest					<total>	
		Penalty					<total>	
		Fees					<total>	
		Other charges					<total>	
	(b) Pre-deposit (20% of disputed tax)	Tax/Cess					<total>	

(b) Details of payment of admitted amount and pre-deposit (pre-deposit 20% of the disputed admitted tax and cess)

Sr. No.	Description	Tax payable	Paid through Cash/Credit Ledger	Debit entry no.	Amount of tax paid			
					Integrated tax	Central tax	State/UT tax	CESS
1	2	3	4	5	6	7	8	9
1.	Integrated tax		Cash Ledger					
			Credit Ledger					
2.	Central tax		Cash Ledger					
			Credit Ledger					
3.	State/UT tax		Cash Ledger					
			Credit Ledger					
4.	CESS		Cash Ledger					
			Credit Ledger					

(c) Interest, penalty, late fee and any other amount payable and paid :

Sr. No.	Description	Amount payable				Debit entry no.	Amount paid			
		Integrated tax	Central tax	State/UT tax	CESS		Integrated tax	Central tax	State/UT tax	CESS
1	2	3	4	5	6	7	8	9	10	11
1.	Interest									
2.	Penalty									
3.	Late fee									
4.	Others (specify)									

Verification

☐ I, < _____ >, hereby solemnly affirm and declare that the information given hereinabove is true and correct to the best of my knowledge and belief and nothing has been concealed therefrom.

Place :

Date :

<Signature>

Name of the Applicant :

Designation/Status :

Who can appeal to GST Appellate Tribunal?

A person aggreived with the decision of the First Appellate Authority or the Revisional Authority, can appeal against the decision to the National Appellate Tribunal (Appellate Tribunal). They must appeal within 3 months from the date of appeal along with the Form GST APL-05 and fees.

The Form shall be accompanied with evidences as per Rule 89(2) and no Pre- Deposit in case of Refund appeals

ORDER OF APPELLATE TRIBUNAL

Sec 113 of CGST Act, 2017

(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 Appellate Authority, **or the Revisional Authority 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.

(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 three times** to a party during hearing of the appeal.

(4) 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.

(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.

Sec 35C of Central Excise Act, 1944

(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 authority which passed such decision or order with such directions as the Appellate Tribunal may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

(1A) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to 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.

(2A) The Appellate Tribunal shall, where it is possible to do so, hear and decide every appeal within a period of three years from the date on which such appeal is filed:

(4) [Save as provided in the National Tax Tribunal Act, 2005] orders passed by the Appellate Tribunal on appeal shall be **final.**

119 is Pari Materia to Section 35N

Sec 119 of CGST Act, 2017

Sums due to be paid notwithstanding appeal, etc.

119: 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] of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the [State Benches] of the Appellate Tribunal under sub-section (1) of section 113 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.

Sec 35N of Central Excise Act, 1944

35N: Sums due to be paid notwithstanding reference, etc.—Notwithstanding that a reference has been made to the High Court or the Supreme Court or an appeal has been preferred to the Supreme Court 3 [under this Act before the commencement of the National Tax Tribunal Act, 2005], sums due to the Government as a result of an order passed under sub-section (1) of Section 35C shall be payable in accordance with the order so passed.

The Provisions of Section 35N of Central Excise Act, 1944 being Pari Materia to The Provisions of Section 119 of CGST Act, 2017

Appeal not to be filed in certain cases.

Sec 120 of CGST Act, 2017

120: Appeal not to be filed in certain cases (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.

(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.

(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.

(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).

Sec 35R of Central Excise Act, 1944

35R: Appeal not to be filed in certain cases—(1) The Central Board of Excise and Customs may, 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, application, revision or reference by the Central Excise Officer under the provisions of this chapter.

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

(3) Notwithstanding the fact that no appeal, application, revision or reference has been filed by the Central Excise Officer pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal, application, revision or reference shall contend that the Central Excise Officer has acquiesced in the decision on the disputed issue by not filing appeal, application, revision or reference.

(4) 2 [The Commissioner (Appeals) or the Appellate Tribunal or court] hearing such appeal, application, revision or reference shall have regard to the circumstances under which appeal, application, revision or reference was not filed by the Central Excise Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

(5) Every order or instruction or direction issued by the Central Board of Excise and Customs on or after the 20th day of October, 2010, but before the date on which the Finance Bill, 2011 receives the assent of the President, fixing monetary limits for filing of appeal, application, revision or reference shall be deemed to have been issued under sub-section (1) and the provisions of sub-sections (2), (3) and (4) shall apply accordingly.

The Provisions of Section 35N of Central Excise Act, 1944 being Pari Materia to The Provisions of Section 119 of CGST Act, 2017

Note:- Sub-section (5) of Central Excise Act, 1944 has been omitted in Section 120 of CGST Act, 2017.

INTEREST ON REFUND OF AMOUNT

Sec 115 of CGST Act, 2017

Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 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.

@ 9%

Sec 35FF of Central Excise Act, 1944

Where an amount deposited by the appellant under Section 35F is required to be refunded consequent upon the order of the appellate authority, there shall be paid to the appellant interest at such rate, not below five per cent and not exceeding thirty-six per cent per annum as is for the time being fixed by the Central Government, by notification in the Official Gazette, on such amount from the date of payment of the amount till, the date of refund of such amount:
Provided that the amount deposited under Section 35F, prior to the commencement of the Finance (No. 2) Act, 2014, shall continue to be governed by the provisions of Section 35FF as it stood before the commencement of the said Act.]

The Provisions of Section 35FF of Central Excise Act, 1944 being Substitute to The Provisions of Section 115 of CGST Act, 2017

Difference between GSTAT and CESTAT

<table>
<tr><th></th><th>GSTAT</th><th>CESTAT</th></tr>
<tr><td>Fees for filling</td><td>Further, There will be no fee for application made for rectification of errors.<table><tr><td>For every 1 lakh rupees</td><td>Rs. 1000/-</td></tr></table></td><td><table><tr><td>Where the amount of Central Excise Duty/ Customs duty/ Service Tax and interest demanded and penalty levied is:-</td><td>Fees</td></tr><tr><td>Rs. 5 lakh or less</td><td>Rs. 1,000/-</td></tr><tr><td>More Than 5 lakh but less than 50 lakh</td><td>Rs. 5,000/-</td></tr><tr><td>More Than 50 lakh</td><td>Rs. 10,000/-</td></tr></table></td></tr>
<tr><td>Time Limit for filling Appeal and condonation of delay</td><td>In case of appeal: within 3 months from date of expiry of 3 months from date of communication of impugned order.
If case of Memorandum of Cross-Objections: Within 45 days after expiry of 45 days from date of receipt of notice.</td><td>The appeal before CESTAT should be filed within three months of the communication of the order, whether it is filed by the party or by the department. However, the Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the relevant period, if it is satisfied that there was sufficient cause for not presenting it within that period.</td></tr>
<tr><td>No. of Benches</td><td>It will have 36 state benches (approx.) along with principal bench in Delhi.</td><td>It has total of nine benches across the country.</td></tr>
</table>

Condonation of Delay in filing GST appeal relying on Limitation Act,1963

- There is no such provision in the act under which the tribunal can entertain an **appeal filed** against the decision or order of the tribunal **after more than the maximum period allowed plus condonation period**.
- If the appeal cannot be filed before the limitation period the appellant has to **file an application for the condonation of delay** in filing appeal.
- The tribunal can condone the delay up to 3 months beyond the specified time period of 3 months, if it is satisfied that there was sufficient cause for the delay.

What happens when limitation period expires?

- If a limitation period does apply and it expires, it may be difficult or impossible to commence legal proceedings even if your case has a merit.

Orders passed by the Hon'ble Supreme Court of India on suspension of limitation prescribed under the general and special laws from time to time:

The Hon'ble Supreme Court on ***23rd March 2020*** in ***Suo Moto Civil Writ Petition (Civil) No. 3 of 2020*** [2]directed extension of the period of limitation irrespective of period of limitation prescribed under the special or general law whether condonable or not in all proceedings before the courts and tribunal including the Hon'ble Supreme Court with effect from March 15, 2020 until further orders.

[2024] 158 taxmann.com 551 (Calcutta)Arvind Gupta vs Assistant Commissioner of Revenue State Taxes.	**Where assessee's appeals was rejected on ground of delay upon holding that there was no scope under provisions of GST act for condoning delay in submitting appeal beyond four months, since section 107 does not exclude applicability of Limitation Act, 1963, section 5 of Limitation Act, 1963, providing for condonation of delay, stands attracted and appellate authority has power to condone delay in filing an appeal beyond limitation specified in Section 107, thus instant delay in presenting appeal was condoned, and appeal was to be restored to file of appellate authority**

PRE-DEPOSIT as per SEC 112(8)

Mandatory Pre Deposit

a. Full amount of undisputed tax/interest/penalty/fine/fee
b. 20% of disputed tax amount **Subject to max Rs.** 50 Crores (each)

20% AMENDED to 10% Max deposit reduced by FB, 24

Authority	Pre- Deposit
Appellate Authority	Admitted liability in Full + 10% of tax in dispute.
Tribunal	Admitted liability in Full + 10% of tax in dispute in addition to the amount deposited before AA as pre-deposit.

Circular No. 172/04/2022
Dated : 06-07-2022

IV. Utilization of the amounts available in the electronic credit ledger and the electronic cash ledger for payment of tax and other liabilities

Q6. Whether the **amount available in the electronic credit ledger** can be used for making payment of any tax under the GST Laws?

- **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**

can be made by utilization of the amount available in the electronic credit ledger of a registered person.

- Also, the electronic credit ledger cannot be used for making payment of any tax which is payable under reverse charge mechanism.

Illustration 2:

In an order dated 9.03.2021 issued to the M/s. RKM Ltd., the Joint Commissioner of the central tax has confirmed a tax demand of 40,00,000 and impose a penalty of 10,00,000. M/s RKM Ltd filed the appeal before the Appellate Authority and the Appellate Authority confirmed the same order. Now, M/s RKM Ltd intends to file appeal with the Appellate Tribunal against the said order of Appellate Authority. What would be the amount of the pre-deposit under sub-section 112(7)?

Solution:

Section 112 (7) of the CGST Act, 2017 requires an appellant before the Appellate Tribunal 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 addition to the amount deposited under Section 107(6). In the present case since entire amount of tax in dispute, hence one has to pre-deposit 10% of 40,00,000 = 4,00,000.

SYNOPSIS

Contents of Appeal

- Rule 110 of CGST states that the APPEAL shall be filed in FORM APL-05 with fee and Pre-deposit electronically or otherwise.
- As per Rule 110 (4) certified copy of **order or decision Appealed against** shall be submitted to Registrar within 7 days.
- No time limit for submission of paper book as compared to 1 month time period in CESTAT .
- Refusal to entertain petty appeals upto Rs. 50000. As per the considered view, this limit will apply in totality. As per section 112(2) Appellate Tribunal may refuse to admit appeal where tax OR ITC OR difference or penalty or fine, does **not exceed 50 thousand rupees**

ADJOURNMENT OF APPEAL

- As per proviso to Sec 113 (2) no adjournment shall be granted more than 3 Times
- Whereas Rule 24 of CESTAT(procedure) Rules,1982 states no such limit on number of adjournments.

Memorandum of cross objections

- As per sec 112(5) memorandum of cross objection must be verified and filled within **45 Days** of **receipt of notice of appeal being preferred by other party.**

AMENDMENT in Order

- As per Section 113(3) Appellate Tribunal may amend ORDER if it is an **error apparent from record**

PROCEEDINGS

- **GSTAT is not bound by Code ofCivil Procedure but will be guided by principles of natural justice as per Sec 111(1) of CGST Act.**
- **Orders of GSTAT can be enforced as if decree made by court in suit.**
- **All proceedings before GSTAT are judicial proceedings.**

Appealable ORDERS

- As per section 112(1) Any person aggrieved may appeal to Appellate tribunal against order passed under section 107 (appellate authority) or section108 (Revisional Authority)within 3 months from the order appealed against .

CONDONATION OF DELAY

- As per section 112(6) The Appellate Tribunal may admit an appeal within **3 Months** after expiry of the **original 3 months** or permit the filing of a memorandum of cross objection within **additional 45 days after expiry of original 45 days**

STAY FOR Recovery Proceedings

- As per section 112(9) where the appellant has paid the amount of pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till disposal of the appeal
- As per Section 119 the stay stands vacated after conclusion of the proceedings of tribunal,. The stay needs to be re-applied before High Court.

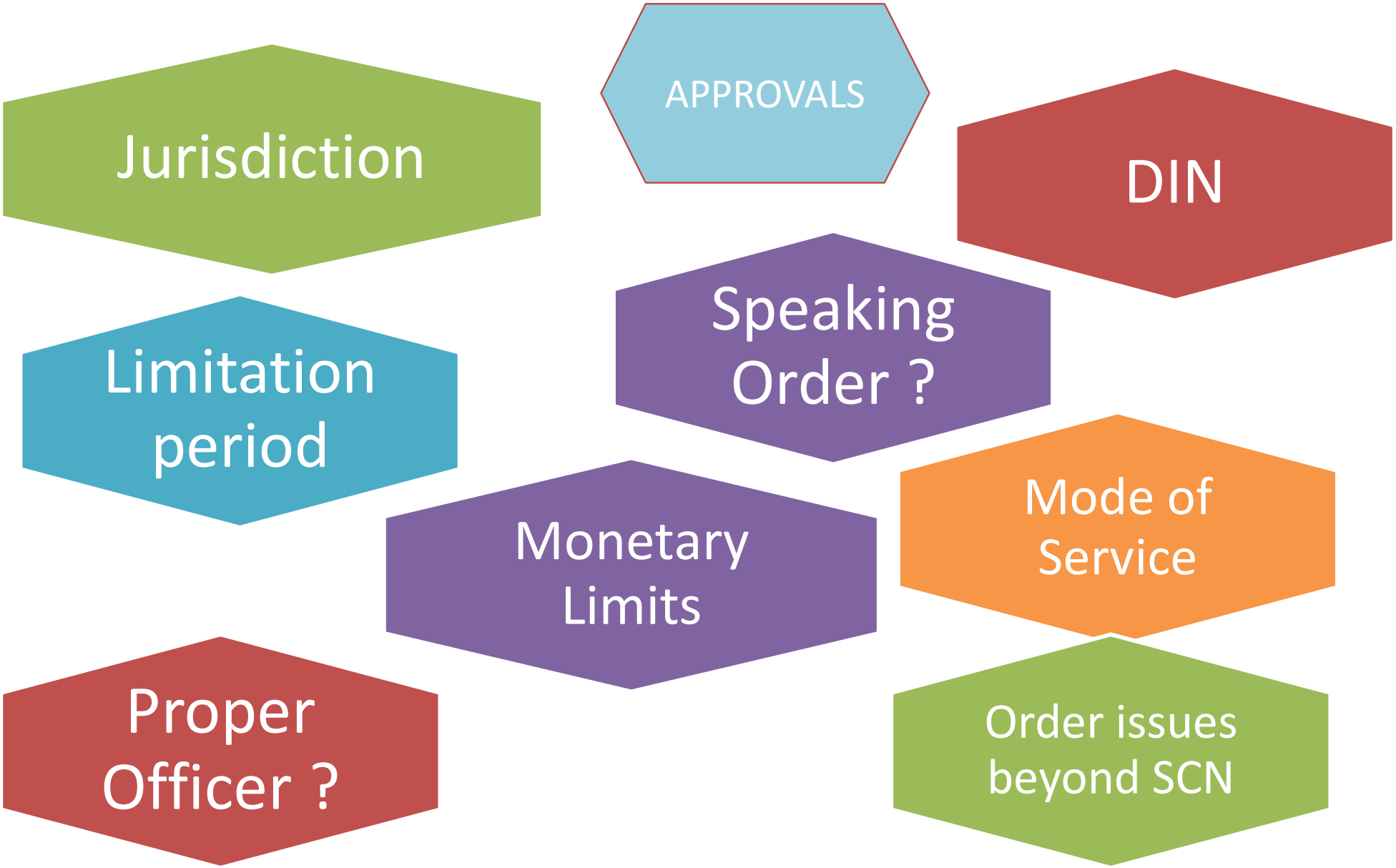
ORDER

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 Appellate Authority, or the Revisional Authority 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.

Thus, GSTAT can remand the matter to lower authorities but cannot enhance the demand as in Section 107(11) by First Adjudicating Authority.

Tribunal can remand back

Points to be considered for Grounds of Appeal



Grounds of Appeal

1. Constitutional
2. Time barring
3. Not a reasoned order or non- speaking order
4. Without application of mind
5. Not given fair or reasonable hearing
6. Breach of Principle of Audi Alterm Partem
7. SCN is Vague- on the basis of presumption and assumptions
8. Authority has not acted as quasi judicial authority
9. Deemed acceptance of an appeal

Sec 75(4)- Opportunity of being heard

An opportunity of being heard 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**

Speaking Order

Sec 75(6)- The proper officer, in this order, shall set out the relevant facts and the basis of his decisions.

Sec 75(7)- Notice and order should be on same lines

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 grounds specified in the notice.**

Sec 75(13)- One penalty for one default

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.**

Penalty imposed should commensurate with the degree and severity of Breach of provisions of law and rules alleged

Penalty depends on totality of facts and circumstances of case

Penalty not imposable if the demand of duty/tax is not sustainable

No Penalty is imposable in case of Retrospective amendment In one of its historic judgments rendered in the case of J.K. Spinning and Weaving Mills Ltd. vs. UOI – 1987 (32) ELT 234 (SC), the Supreme Court held that it would be against all principles of legal jurisprudence to impose a penalty on a person or to confiscate his goods for an act or omission which was lawful at the time when such act was performed or omission made, but subsequently made unlawful by virtue of any provision of law.

Nature of breach & provisions of law under which penalty is imposed is to be specified

Penalty is not imposable when issue relates to the statutory interpretation In the case of Uniflex Cables Ltd. vs. CCE – 2011 (271) ELT 161 (SC), the Supreme Court dealt with the issue with regard to the imposition of penalty where the issue involved was of interpretational nature. Taking note of the fact that the Commissioner himself had found that it was only a case of interpretational nature, the Supreme Court quashed the order of the Commissioner imposing the penalty as also the order of the Tribunal so far as it confirmed the imposition of penalty on the Appellant.

The 12 GOLDEN POINTERS to be considered before replying the show cause notices U/S 73 or 74 or Filling of appeals.

1. The **notice must specify**:

- whether it is: U/s 73 or 74 along with the limb,
- whether it is: tax not paid, tax short paid, erroneously refunded or ITC wrongly availed or utilized.

2. The **monetary limits** must be adhered to.

3. The **Time period limits** must be adhered to while issuing the notices.

4. The notice must come from **the jurisdictional officer.**

5. The **requisite approvals** must have been taken by the officer.

6. The **mode of service** of the notice must be as per **Sec 169** of CGST act.

Note: Please make sure **there is difference between the mode of service and the communication to the taxpayer.**

7. Order must **not travel beyond SCN**.

8. The order **must be passed considering the reply given** by the taxpayer.

9. Personal hearing must be given to the taxpayer, even if not demanded by the taxpayer and adverse opinion is being formed by the officer.

10. The order passed **must be a speaking order** with all the base documents or evidences placed on record.

11. The order **must be passed with a DIN,** even the notice must have the DIN placed on it if it is **from the central department or state reference number** wherever applicable in the states.

12.Unsigned Order: The order passed must be signed order because as for the various judgments, the unsigned order is ***VOID AB INITIO.***

Grounds

1. Constitutional
2. Time barring
3. Not a reasoned order or non- speaking order
4. Without application of mind
5. Not given fair or reasonable hearing
6. Breach of Principle of Audi Alterm Partem
7. SCN is Vague- on the basis of presumption and assumptions
8. Authority has not acted as quasi judicial authority
9. Deemed acceptance of an appeal

•Notice must contain all essential details and should not be based on assumptions

NO	Name & Citation	Particulars
1	[2007] taxmann.com 728 (SC) SUPREME COURT OF INDIA Commissioner of Central Excise, Bangalore v. Brindavan Beverages (P.) Ltd	Show cause notice - is foundation on which Department has to build up the case - allegations have to be specific and not vague, lacking in details or unintelligible in order to give proper opportunity to noticee to defend.
2	Oudh Sugar MillsLtd. vs. Union of India 1978 ELT J172	It stated that the findings based on such show cause notice are without any tangible evidence and are based only on inferences involving unwarranted assumptions.
3	[2022] 137 taxmann.com 474 (Jharkhand) HIGH COURT OF JHARKHAND Godavari Commodities Ltd. v. State of Jharkhand	- HELD : Entire adjudication proceedings had been carried out in stark disregard to mandatory provisions and in violation of principles of natural justice - Adjudication order was non best in eye of law, as same had been passed without issuance of proper SCN - Summary of SCN, adjudication order and summary of orders issued were to be quashed and set aside
4	[2021] 131 taxmann.com 230 (Jharkhand) HIGH COURT OF JHARKHAND Nkas Services (P.) Ltd. v. State of Jharkhand	Show cause notice under section 74 issued by Deputy Commissioner to petitioner had been challenged on ground that impugned show cause notice was vague and did not disclose offence and contraventions and, thus, it did not fulfil ingredients of a notice in eyes of law - Perusal of show cause notice showed that it was a notice issued in a format without even striking out any irrelevant portions and without stating contraventions committed by petitioner, i.e., whether it was actuated by reason of fraud or any wilful misstatement or suppression of facts in order to evade tax

Section 73 of CGST Act, 2017

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

What does Section 73 say:

Section 73 talks about the determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any willful-misstatement or suppression of facts.

CAUSE?? Relevant Material on Record
Application of Mind
Mechanical Basis of Notices (System Generated)

L
I
M
B

(1) Where it **appears to the proper officer** that
any tax has not been paid
or
short paid
or
erroneously refunded,
or
where input tax credit has been wrongly availed or utilised

for any reason, other than the reason of fraud or any willful-misstatement or suppression of facts to evade tax, INTENTION-Non Disclosure + Intention

he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit,
requiring him to **show cause** as to why he should not pay the amount specified in the notice along with interest **payable thereon** under section 50 and a **penalty leviable** under the provisions of this Act or the rules made thereunder.

CASE LAWS:

ISSUE OF DRC-01A/DRC-01 WITHOUT ISSUING ASMT 10

SR. NO.	Name & Citation	Particulars
1	2022 (10) TMI 784 - MADRAS HIGH COURT M/S. VADIVEL PYROTECH PRIVATE LIMITED VERSUS THE ASSISTANT COMMISSIONER (ST) , CIRCLE-II, COMMERCIAL TAX DEPARTMENT, NGO COLONY, SATCHIYAPURAM, SIVAKASI	**Show cause notice issued and order passed citing discrepancies different from discrepancies mentioned in scrutiny notice in Form ASMT-10, were not sustainable** **Proper officer cannot issue DRC-01/01A on matters not intimated to taxpayer in form ASMT 10** HELD : ASMT-10 notice is mandatory before issuing DRC-01 if same is pursuant to scrutiny under section 61 and not issuing DRC-01 in accordance with ASMT-10 will vitiate entire proceedings - Matter was remanded to Assessing Officer for redoing-assessment
2	2024 (3) TMI 483 - TELANGANA HIGH COURT M/S. ADIL TRADING. VERSUS SUPERINTENDENT OF CUSTOMS AND ORS.	HELD THAT : Where the issuance of the provisional attachment order, the respondents have not served the petitioner with any notice in Form ASMT-10 In the process, the petitioner was not provided with any notice calling for his explanation for the discrepancy notice and for the payment of tax liability. Instead, the respondent officer has straightaway issued the impugned DRC-22. This order of provisional attachment is un-just, arbitrary and with malafied intentions. The same has also not in conformity to the principles of natural justice and is liable to be set aside/quashed
3	2023 (6) TMI 1300 - ANDHRA PRADESH HIGH COURT M/S DEVI TRADERS VERSUS THE STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY TO GOVERNMENT, STATE TAX DEPARTMENT	HELD THAT : any proceeding in GST DRC-01A/1 culminating in an Order in GST DRC-07, if pursuant to Scrutiny under Section 61 of the TNGST Act ought to be preceded by issuance of Form ASMT 10.
4	Pepsico India Holdings (P.) Ltd. v. Union of India, 2023] 157 taxmann.com 428 (Gauhati), HIGH COURT OF GAUHATI	Held that: Form GST ASMT-10 was not issued to petitioner - An act of issuance of impugned demand-cum-show cause notice under section 73(1) by proper officer was without compliance of mandatory conditions, more particularly, provisions of section 61 read with rule 99, to derive jurisdiction to issue such a demand-cum-show cause notice under section 73(1) - Therefore, operation of impugned demand-cum-show cause notice was to be stayed.

Can Notice u/s 74 can be issued???

SECTION 74- OF GST ACT NOT TO BE INITITADE AGAINST PURCHASER FOR NON – DEPOSIT OF GOODS AND SERVICE TAX (GST) BY SUPPLIER :

Citation : Subhash Singh v. Deputy Commissioner, SGST [Special Appeal No. 100 of 2024 dated May 03, 2024]

The Hon'ble Uttarakhand High Court in Subhash Singh v. Deputy Commissioner, SGST [Special Appeal No. 100 of 2024 dated May 03, 2024] has modified the assessment order passed earlier against the purchasing dealer on condition of depositing 10% of the amount demanded and further observed that proceedings under Section 74 of the Central Goods and Services Tax Act, 2017 ("the CGST Act") should not ideally be instituted against the purchasing dealer for availing the benefit of ITC since the same has not been availed in a fraudulent-manner.

Facts :-

1. ***The appellant is engaged in retail and wholesale business of iron scrap and waste***
2. ***The appellant has purchased goods with proper invoices payments made through banking channel . Details of payment including payment of tax recorded in appellants books of accounts.***
3. ***The Supplier of appellant has received GST, when they have supplied goods to appellant and the appellant has rightly availed the input tax credit for the tax period April 2021- March 2022.***
4. ***The Appellant contended that proceedings under Section 74 of the CGST Act, cannot be initiated against the Appellant for availing the benefit of ITC in a fraudulent manner since the Appellant had paid GST, and it was reflected in invoices and E-way bills. If the Appellant's suppliers committed a default, can the Appellant be liable for the consequences of denying the ITC.***

Conclusion: The Uttarakhand High Court's decision:
Reinforces the principle that ITC should not be denied to purchasing dealers for the faults of their suppliers. By modifying the assessment order and emphasizing the purchaser's compliance, the court has set a precedent for fair treatment under GST laws. This ruling not only clarifies the obligations of purchasers but also highlights the importance of suppliers' compliance in the seamless functioning of the GST framework.

VAGUE

NOTICE

Mehta pharmaceuticals

vs

Commissioner Or Cus. And C. Ex. on 4 April, 2003-Equivalent citations 2003 (157) ELT 105 Tri Mumbai

[Vague notice]

The extract of the show cause notice cited above does not seem to challenge inadequacy of the documents. It could be that such inadequacy could be inferred there from but the Notice, which is meant to put the recipient on notice, must should spell always spell out the exact charge. A notice, which is ambiguous or capable of interpretation, cannot be the ground exact for sustaining an order based on the inference drawn from the nature of show cause notice.

SCN Was Bereft Of Any Details And No Details Were Provided

[2024] 159 taxmann.com 39 (Delhi)
HIGHCOURT OF DELHI
Nirmal Metal
v.
Union of India*
SANJEEV SACHDEVA AND RAVINDER DUDEJA, JJ.
W.P.(C) NO. 593 OF 2024
JANUARY 24, 2024

FACTS

Show cause notice Cancellation of Registration

Show cause notice was issued to petitioner - assessee sought quashing of said show cause notice and further sought restoration and revival of GST registration of assessee **on ground that SCN was bereft of any details and no details were provided to assessee**

HELD

- Respondent authorities were to be directed to furnish to assessee entire material available with them in support of show cause notice –
- **Assessee was at liberty to file detailed response to same**

Thereafter, respondent authorities were to dispose of show cause notice by a speaking order after giving opportunity of personal hearing to assessee [Section 29 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017]

SCN & ORDER Was Bereft Of Any Details And No Details Were Provided

[2024] 160 taxmann.com 428 (Delhi)
HIGH COURT OF DELHI
Krishan Mohan
v.
Commissioner of GST*
SANJEEV SACHDEVA AND RAVINDER DUDEJA, JJ.
W.P.(C) NO. 3597 OF 2024
MARCH 11, 2024

FACTS

Show cause notice Cancellation of Registration

- Show cause notice was issued for cancelling assessee's GST registration retrospectively as assessee had not filed returns for continuous period of six months
- Thereafter order was passed stating that same was with 'reference to assessee's reply in response to show cause' notice
- **Show cause notice and order cancelling assessee's registration were bereft of any details and neither show cause notice, nor order spelt out reasons for retrospective cancellation;**

HELD

- Impugned order in itself was contradictory
- Show cause notice and impugned order were bereft of any details and neither show cause notice, nor order spelt out reasons for retrospective cancellation
- Accordingly, same could not be sustained, Assessee did not seek to carry on business or continue with registration.

Registration cancellation order was to be modified to limited extent that registration should be treated as cancelled with effect from date when show cause notice was issued [Section 29 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017]

CRYPTIC ORDER

Non-consideration of Reply

Section 73 of Central Goods and Services Tax Act, 2017

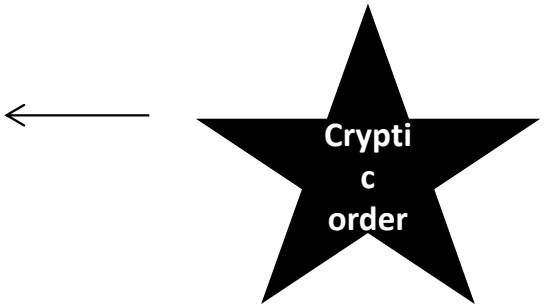
[2024] 161 taxmann.com 399 (Delhi)

HIGH COURT OF DELHI

Biba Fashion Ltd.

v.

Government of NCT of Delhi*



1. Assessee filed a detailed reply to show cause notice, Adjudicating Authority was required to consider same on merits and then form an opinion and if it was of view that any further details were required, same could have been specifically sought from assesse

2. However, impugned order dated 26-12-2023 did not take into consideration reply submitted by petitioner and was

A Cryptic Order

3. Proper Officer **had to at least consider reply on merits and then form an opinion** - He merely held that reply was incomplete, not duly supported by adequate documents, not clear and unsatisfactory, which ex-facie showed that Proper Officer had not applied his mind to reply submitted by petitioner

4. Further, if Proper Officer was of view that any further details were required, same could have been specifically sought from petitioner - However, record did not reflect that any such opportunity was given to petitioner to clarify its reply or furnish further documents/details - Impugned order was to be set aside and matter was to be remitted to Proper Officer for re-adjudication

NON-CONSIDERATION OF REPLY

- In case of **Oswal Agencies (P.) Ltd. v. Union of India** W.P.(C) No. 208 of 2024 CM APPLS. No. 977 of 2024 FEBRUARY 12, 2024 **(HIGH COURT OF DELHI) [2024] 159 taxmann.com 547 (Delhi)**: it has been held that **Order was cryptic order without any reasons and without taking into account reply filed by petitioner. Non-consideration of assessee's replies is passing Cryptic order** - Impugned order records that no proper reply had been submitted and **reply stated to be improper was not found to be satisfactory - However, none of averments of petitioner had been taken into account while passing impugned order .**

- In case of **DELHI HIGH COURT M/S. SHRI SHYAM METAL VERSUS THE UNION OF INDIA & ANR.** W.P.(C) 2237/2024 & CM. APPLS. 9266-67/2024 dated 15-2-2024 **{2024 (2) TMI 999} it has been held that detailed replies were furnished by the petitioner giving full particulars under each of the heads. The impugned order, however, after recording the narration, records that the reply uploaded by the taxpayer is not satisfactory. It merely states that "And whereas, after analyzing, examining and evaluating the reply filed by the taxpayer and details available, as on date on the GST portal, reply of the tax payer is found to be vague and miserably fails to counter the demands mentioned in the DRC-01." - In case the GST Officer was of the view that reply was vague or further details were required**, the same could have been sought from the petitioner, however, the record does not reflect that any such opportunity was given to the petitioner to clarify its reply or furnish further documents/details - Further petitioner was not provided with an adequate opportunity to defend the show cause notice by way of a hearing. **Impugned order is a cryptic order without adverting to any of the submissions raised by the petitioner and records that the reply was not found satisfactory - violation of principles of natural justice.**

- In case of **HIGH COURT OF MADRAS Make My Trip (India) (P.) Ltd. v. State Tax Officer[2024] 158 taxmann.com 492 (Madras) it has been held that Non-consideration of reply to show cause notice certainly prejudices assessee's and denies assessee a reasonable opportunity to establish its position - Therefore, without expressing any opinion on merits of matter, orders were to be quashed and matter was remanded for reconsideration by assessing officer after providing a reasonable opportunity to the petitioner** [Section 73 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 4 and 5].

- In case of **HIGH COURT OF DELHI Paras Enterprises v. Union of India [2024] 159 taxmann.com 657 (Delhi) it has been held that** impugned order did not consider assessee's reply and instead concluded that it was unsatisfactory, leading to issuance of demand ex parte - Assessee contended that **impugned order was cryptic, failed to consider his detailed reply, and he was not afforded proper hearing,thus**, **High Court, recognizing merit in assessee's contentions, held that impugned order lacked sufficient reasoning and highlighted Revenue authorities' failure to afford assessee opportunity to clarify his reply or furnish additional documents/details - Impugned order and show cause notice was set aside and matter was remitted back to Proper Officer for re-adjudication, with directions to provide assessee with specific details/documents required.**

[2024] 161 taxmann.com 260 (Delhi)

HIGH COURT OF DELHI

A. B. Traders

v.

Commissioner of Delhi Goods and Service Tax

SANJEEV SACHDEVA AND RAVINDER DUDEJA, JJ.

W.P. (C) NO. 4739 OF 2024

CM APPL. NO. 19450 OF 2024

APRIL 2, 2024

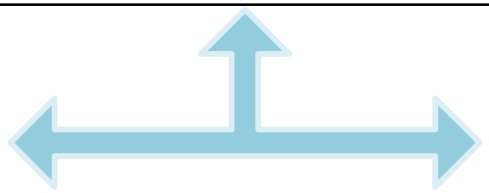
AO can't hold that reply of SCN was insufficient without examining documents submitted by asssee

Adjudication - Reversal of ITC - A show cause notice was issued to petitioner-assessee proposing demand of Rs. 44.48 lakhs under heads i.e. under declaration of output tax; excess claim of ITC; ITC claimed from cancelled dealers, return defaulters and tax non-payers and scrutiny of ITC reversal - Assessee filed reply to said notice - Impugned order was passed recording that reply uploaded by assessee was insufficient and unsatisfactory - HELD : Impugned order did not specifically deal with reply of assessee to show cause notice, however referred to certain judgments to hold that burden to prove admissibility of any input tax credit could not be shifted to tax authorities - Proper officer was required to examine documents submitted by assessee and then hold whether input tax credit was admissible or not - Proper officer had not stated why such transactions were not acceptable - Impugned order was to be set aside and matter was to be remanded to proper officer to re-adjudicate issues [Section 73 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017] [Paras 5 and 6] [In favour of assessee/Matter remanded]

POINTS TO PONDER

- NON CONSIDERATION OF THE SPILL OVER EFFECTS, GSTR 9 & 9C available on record, payments made through DRC 03 BY DEPARTMENT INCREASES THE LEGAL COSTS OF TAXPAYERS AND UNNECESSARY BURDEN OF COMPLIANCES.
- TIMELY REPLY SHOULD BE FILED BY THE TAXPAYER In APPROPRIATE FORMATS IRRESPECTIVE OF ERROR IN CALCULATION OF DEPARMENT.
- REPLY SHOULD BE GIVEN ON LEGAL GROUNDS (OBJECTIONS) FOLLOWED BY FACTUAL GROUNDS
- FACTS EXPLAINING THE ACTUAL FIGURES SHOULD BE PUT FORWARD IN REPLY
- SUPPORITNG DOCUMENTS SHOULD BE ATTACHED ALONG WITH THE REPLY
- TABLE SHOWING ACTUAL FIGURES SHOULD BE PUTFORTH IN THE REPLIES
- WHEREEVER REQUIRED JUDICIAL PRONOUNCEMENTS SHOULD BE REFEREED

SPILL OVER EFFETCS- RULE TO BE FOLLOWED



P.Y. ADJUTMENT DONE THIS YEAR

Table no 10 of P.Y gstr-9
Reduce it in C.Y. output of 3B

Table no 11 of P.Y gstr-9
Increase it in C.Y. output of 3B

CURRCET YEAR ADJUSTMENT DONE NEXT YEAR

Table no 10 of C.Y gstr-9
Increase it in C.Y. output of 3B

Table no 11 of C.Y gstr-9
Decrease it in C.Y. output of 3B


BURDEN OF PROOF

Burden of Proof lies upon the person making the allegation. 1st Assessment is Self Assessment, so Burden of Proof shifts on department except ITC due to Section 155(Specific Provision). Department to provide Copy of Statement, Basis of Allegation and RTP's right to have the relied upon documents. SCN should not be merely based upon matching of Return data, Auto generated but should be with application of mind. Section - 155, Central Goods And Services Tax Act, 2017 Burden of proof.

155. Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

BURDEN OF PROOF ON PURCHASING DEALER

HELD

The State of Karnataka v. M/s Ecom Gill Coffee Trading Private Limited 2023 [2023] 148 taxmann.com 352 (SC)

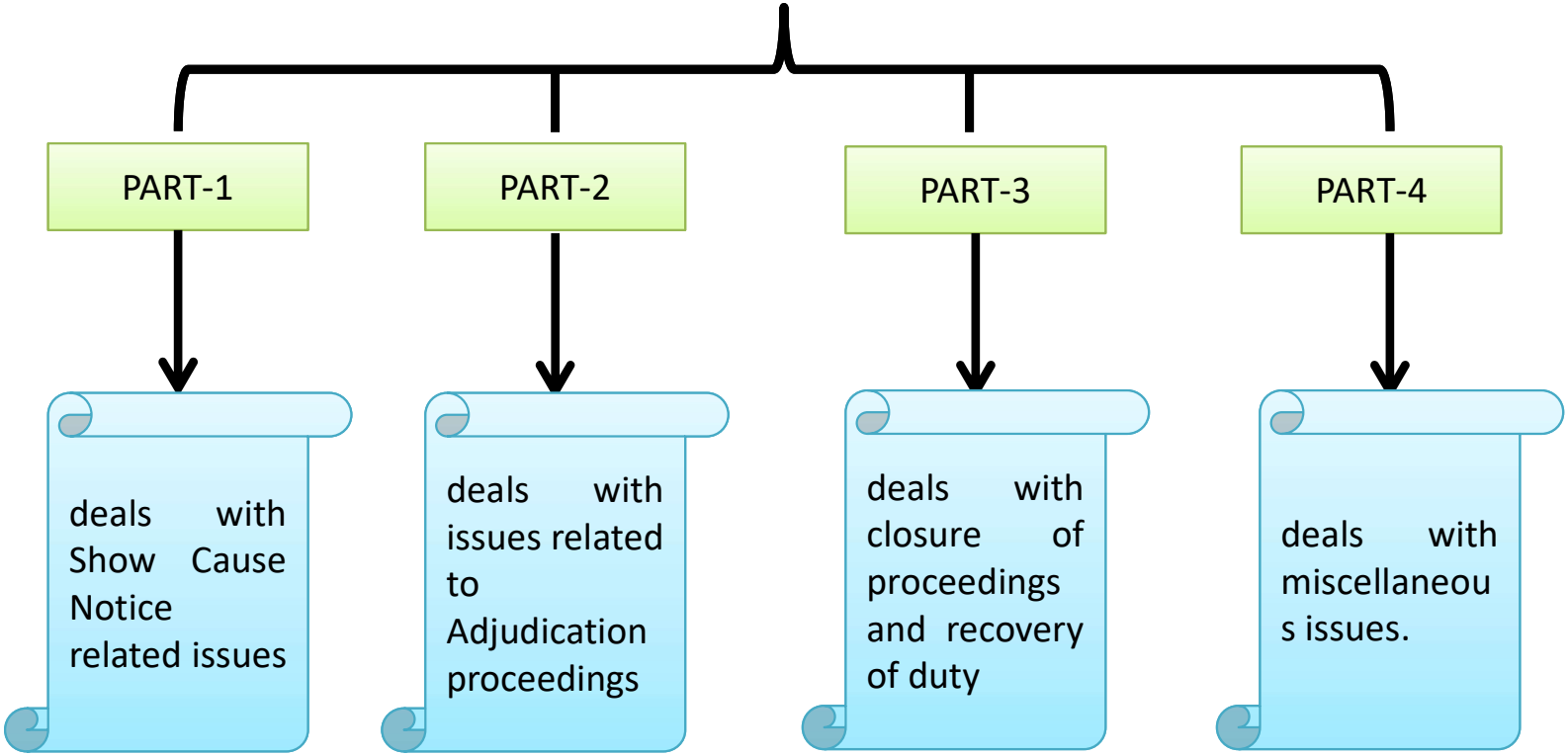
- **Input Tax Credit would be available to purchasing dealer only after he discharge burden to establish actual receipt of goods; mere production of invoice and payment to selling dealer by account payee cheque was not sufficient**

- **The provisions of Section 70, in its plain terms clearly stipulate that the burden of proving that the ITC claim is correct lies upon the purchasing dealer claiming such ITC. Burden of proof that the ITC claim is correct is squarely upon the assessee who has to discharge the said burden. Merely because the dealer claiming such ITC claims that he is a bona fide purchaser is not enough and sufficient. The burden of proving the correctness of ITC remains upon the dealer claiming such ITC. Such a burden of proof cannot get shifted on the revenue. Mere production of the invoices or the payment made by cheques is not enough and cannot be said to be discharging the burden of proof cast under section 70 of the KVAT Act, 2003. The dealer claiming ITC has to prove beyond doubt the actual transaction which can be proved by furnishing the name and address of the selling dealer, details of the vehicle which has delivered the goods, payment of freight charges, acknowledgement of taking delivery of goods, tax invoices and payment particulars etc.**

Circular No. 1053/02/2017-CX

F.No. 96/1/2017-CX.I

Subject: Master Circular on Show Cause Notice, Adjudication and Recovery –reg



IMPORTANT POINTS OF THE CIRCULAR ARE DISCUSSED AS FOLLOWS:

PART-1 **Deals with Show Cause Notice related issues**

2.1 Understanding Show Cause notice (SCN)

1. Show Cause Notice (SCN) is the starting point of any legal proceedings against the party.
2. It lays down the entire framework for the proceedings that are intended to be undertaken and therefore it **should be drafted with utmost care**.
3. Issuance of SCN is a statutory requirement and it is the basic document for settlement of any dispute relating to tax liability or any punitive action to be undertaken for contravention of provisions of act and the rules made there under.
4. A SCN offers the noticee an opportunity to submit his oral or written submission before the Adjudicating Authority on the charges alleged in the SCN.
5. The issuance of show cause notice is a mandatory requirement according to the principles of natural justice which are commonly known as “audi alteram partem” which means that no one should be condemned unheard.

2.2 Structure of Show Cause notice (SCN):

A SCN should ideally comprise of the following parts, though it may vary from case to case:

a) Introduction of the case
b). Legal frame work
c). Factual statement and appreciation of evidences
d). Discussion, facts and legal frame work,
e). Discussion on Limitation
f). Calculation of duty and other amounts due
g). Statement of charges
h). Authority to adjudicate.

2.4 Legal framework: **The authority issuing the SCN should clearly lay down the legal provisions in respect of which the person shall be put to notice.** While specifying the provisions, care should be taken to be very accurate in listing all the provisions and the law in respect of which the contraventions are to be alleged in the SCN.

2.5 Factual statement and appreciation of evidence: In this part of SCN, the facts relating to act of omission and commission pertinent to the initiation of the proceedings against the noticee need to be stated in a most objective and precise manner. **All evidences in form of documents, statements and material evidence resumed during the course of enquiry /investigation should be organized serially in a manner so as to establish the charges against the noticee**. While discussing the facts and evidences, care should be taken to be precise and succinct in expression so that unnecessary details are avoided.

2.8 Quantification of duty demanded: It is desirable that the demand is quantified in the SCN, however **if due to some genuine grounds it is not possible to quantify the short levy at the time of issue of SCN, the SCN would not be considered as invalid**. It would still be desirable that the principles and manner of computing the amounts due from the noticee are clearly laid down in this part of the SCN

3.1 Limitation to demand duty: A show cause notice demanding duty not paid or short paid or erroneous refund can be issued by the Central Excise Officer normally within two year from the relevant date of non-payment or short payment of duty, whereafter the demand becomes time-barred. **Where duty has not been paid or short paid by any person chargeable with the duty by reason of fraud or collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions** of the Central Excise Act, 1944 or of the Rules made thereunder with intent to evade payment of duty, **a longer period of limitation applies and show cause notice demanding duty can be issued** within five years from the relevant date.

3.4 Extended period in disputed areas of interpretation: There are cases where either no duty was being levied or there was a short levy on any excisable goods on the belief that they were not excisable or were chargeable to lower rate of duty, as the case may be. Both trade and field formations of revenue may have operated under such understanding. Thus, the general practice of assessment can be said to be non-payment of duty or payment at lower rate, as the case may be. In such situations, Board may issue circular clarifying that the general practice of assessment was erroneous and instructing field formations to correct the practice of assessment. **Consequent upon such circular, issue of demand notice for extended period of time would be incorrect as it cannot be said that the assessee was intentionally not paying the duty.**

3.6 Power to invoke extended period is conditional: **Power to issue notice for extended period is restricted by presence of active ingredients which indicate an intent to evade duty** as explained above. Indiscriminate use of such restricted powers leads to fruitless adjudications, appeals and reviews, inflates the figures of outstanding demands and above all causes unnecessary harassment of the assessees. Therefore, before invoking extended period, it must be ensured that the necessary and sufficient conditions to invoke extended period exists.

3.7 Second SCN invoking extended period: **Issuance of a second SCN invoking extended period after the first SCN invoking extended period of time has been issued is legally not tenable**. However, the second SCN, if issued would also need to establish the ingredients required to invoke extended period independently. For example, in cases where clearances are not reported by the assessee in the periodic return, second SCN invoking extended period is quite logical whereas in cases of willful mis-statement regarding the clearances made under 8 appropriate invoice and recorded in the periodic returns, second SCN invoking extended period would be difficult to sustain as the department comes in possession of all the facts after the time of first SCN. **Therefore, as a matter of abundant precaution, it is desirable that after the first SCN invoking extended period, subsequent SCNs should be issued within the normal period of limitation.**

PART-2

Adjudication of Show Cause Notice

13.0 Service of Show Cause Notice and Relied upon Documents: **A show cause notice and the documents relied upon in the Show Cause Notice needs to be served on the assessee for initiation of the adjudication proceedings.** The documents/records which are not relied upon in the Show Cause Notice are required to be returned under proper receipt to the persons from whom they are seized. Show Cause Notice itself may incorporate a clause that unrelied upon records may be collected by the concerned persons within 30 days of receipt of the Show Cause Notice. The designation and address of the officer responsible for returning the relied upon records should also be mentioned in the Show Cause Notice. This would ensure that the adjudication proceedings are not delayed due to non-return of the non-relied upon documents.

14.5 Adjudication order: **The adjudication order must be a speaking order. A speaking order is an order that speaks for itself.** A good adjudication order is expected to stand the test of legality, fairness and reason at higher appellate forums. Such order should contain all the details of the issue, clear findings and a reasoned order.

14.6 Analysis of issues: **The Adjudicating authority is expected to examine all evidences, issues and material on record, analyze those in the context of alleged charges in the show cause notice. He is also expected to examine each of the points raised in the reply to the SCN and accept or reject them with cogent reasoning.** After due analysis of facts and law, adjudicating authority is expected to record his observations and findings in the adjudication order

14.7 Body of the order: The adjudication order should generally contain brief facts of the case, written and oral submissions by the party, observation of the adjudicating authority on the evidences on record and facts of omission and commission during personal hearing and finally the operating order. **At any cost, the findings and discussions should not go beyond the scope and grounds of the show cause notice.**

14.8 Quantification of demand: The duty demanded and confirmed should be clearly quantified and the order portion must contain the provisions of law under which duty is confirmed and penalty is imposed. **The duty demanded in an adjudication order cannot exceed the amount proposed in the Show Cause notice.**

14.9 Corroborative evidence and Cross-examination: **Where a Statement is relied upon in the adjudication proceedings, it would be required to be established though the process of cross-examination, if the noticee makes a request for cross-examination of the person whose statement is relied upon in the SCN.** During investigation, a statement can be fortified by collection of corroborative evidence so that the corroborative evidence support the case of the department, in cases where cross-examination is not feasible or the statement is retracted during adjudication proceedings. **It may be noted retracted statement may also be relied upon under given circumstances.**

15. Corrigendum to an adjudication order: **A corrigendum to an adjudication order can only be issued to correct minor clerical mistakes which do not alter the adjudication order per se.** Therefore, adjudicating order should normally be issued. **It may be noted that after issuing an adjudication order, the adjudicating authority becomes functus officio, which means that his mandate comes to an end as he has accomplished the task of adjudicating the case.** As a concept, functus officio is bound with the doctrine of res judicata, which prevents the reopening of a matter before the same court or authority. **It may also be noted that under the Central Excise Act, adjudicating authority does not have powers to review his own order and carry out corrections to the adjudication order.**

16. Transfer of adjudicating authority: Adjudicating officers are expected to issue orderin-original before being relieved in cases where personal hearing has been completed. The successor in office can not issue any order on the basis of personal hearing conducted by the predecessor. **The successor in office should offer a fresh hearing to the noticee before deciding the case and issuing adjudication order/formal order.**

WHETHER MERELY INTEREST AND PENALTY NOTICE CAN BE ISSUED UNDER SECTION 73/74

Sec. 75(12) 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.- '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.'

Finance Act 2021 w.e.f 01.01.2022

Amendment of section 75.

8 General provisions relating to determination of tax.

Explanation inserted:-

'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.'

Analysis

- This proposed amendment **widens the scope of self assessed tax** by including tax payable in respect of output supplies in GSTR 1 but not included in GSTR 3B.
- In cases where the liability in **GSTR-1 exceeds that from GSTR-3B, the same would be construed as "Self Assessed Tax"**
- Such short payment may give rise to invocation of **recoveries u/s 79** by virtue of sec. 75(12) and even attachment of **bank accounts through amended provision of Sec. 83.**
- In case of mismatch between GSTR 1 and 3B, **SCN need not to be issued and Opportunity of being heard need not to be provided**. (Although one may rely upon the judgment of LC infra [2020] 116 taxmann.com 205 (Karnataka) and Mahadeo Construction Co. [2020] 116 taxmann.com 262.)
- This will **curb the malpractices whereby liability was shown more in GSTR 1 rather than GSTR-3B, to avoid tax payments.**

- In the case of **Rajkamal Builder Infrastructure (P.) Ltd. v. Unionof India - 2021 (3) TMI 1139 - GUJARAT HIGH COURT** in which it was held in the following paras that-

9. Thus, the plain reading of the aforesaid rules indicates that Form GST DRC 01 can be servedby the proper officer along with the notice issued under section 52 or Section 73 or section 74 orsection 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section129 or section 130 and that too, electronically as a summary of notice.

10. We do not find reference of any notice under section 50 so far as Rule 142(1)(a) of the CGSTRules is concerned. In such circumstances, **DRC 01 could not have been issued for the purposeof recovery of the amount towards interest on delayed payment of tax.**

...
...

18. In view of the aforesaid, **the Form GST DRC 01 could be said to have been issued without any authority of law.**

(Emphasis Supplied)

From perual of above, it is evident that standalone Interest and Late Fee cannot be demanded through the Show Cause Notice u/s 73.

[2020] 116 taxmann.com 205 (Karnataka) Union of India *v.* LC Infra Projects (P.) Ltd.

Competent Authority without issuing show cause notice as contemplated under section 73 determined interest payable under section 50 and attached bank account of assessee

- Whether issuance of show cause notice is sine qua non to proceed with recovery of interest payable in accordance with sub-section (1) of section 50 –
  - Held, yes –
- Whether therefore, interest levied upon assessee without issuing show cause notice was in breach of principles of natural justice and deserved to be set aside –
  - Held, yes

Without issuing SCN --- the Notion is Misconceived

No SCN required u/s 75(12) but Interest Liability generated u/s 50(1) by Deptt is not Self Asssessed

[2020] 116 taxmann.com 262 (Jharkhand) Mahadeo Construction Co. *v.* Union of India*

Facts of the case

Assessee
(Partnership Firm)

filed its monthly return for month of February, 2018 and March, 2018

directed petitioner to make payment of interest on ground of delay in filing of GSTR-3B return for said months

Revenue
Authorities

Revenue further exercised powers under section 79 by initiating garnishee proceedings for recovery of said amount of interest by issuing notice to assessee's Banker

Held

- Whether since petitioner disputed computation or very leviability of said interest, liability of said interest was required to be adjudicated by initiation of adjudication proceedings under section 73 or 74 –
  - Held, yes –
- Whether, therefore, without initiation of any adjudication proceedings, no recovery proceeding under section 79 could be initiated for recovery of interest amount –
  - Held, yes

IMPLEMENTATION OF PROVISIONS OF 75(12)

Notification 26/2022 dated 26-12-2022

Tax in GSTR-1 > GSTR-3B

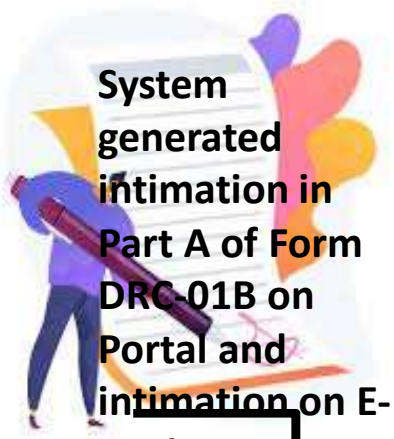
➢ RULE 88C

"88C. Manner of dealing with difference in liability reported in statement of outward supplies and that reported in return i.e. difference in GSTR-1 & GSTR-3B.

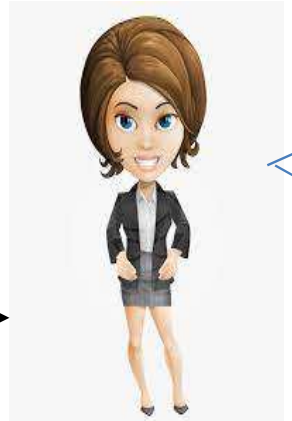
To put an end to the uncertainties prevailing in the trade due to absence of any requirement to issue any notice/intimation under the law u/s 75(12) by the department before initiating direct recovery, Rule 88C has been inserted in the CGST Rules. This rule basically provides for as under:

1. Where tax payable for a tax period under GSTR-1 exceeds the amount of tax payable under GSTR-3B, by specified amount and percentage, a system generated intimation in Part A of Form DRC-01B of such difference shall be given to registered person.
2. On receipt of DRC-01B, registered person shall **within a period of 7 days** either pay such differential tax liability fully or partially with interest and furnish details thereof and furnish the same in Part B of Form DRC-01B electronically on the common portal, or
3. Furnish a reply electronically on common portal incorporating reasons in respect of unpaid differential liability, if any, **in Part B of Form DRC-01B**.
4. In case, differential tax liability is not paid within period specified, or where no explanation or reason is furnished by registered person or where such reason is not found to be acceptable by proper officer, **the said amount shall be recoverable in accordance with Section 79 of the CGST Act.**

Tax in GSTR-1 > GSTR-3B by Specified %age



System generated intimation in Part A of Form DRC-01B on Portal and intimation on E-mail



RTP

Within 7 days

PAY & Furnish the same in Part B of Form DRC-01B on Common Portal

Not PAid

Furnish a Reply electronically on common portal in Part B of Form DRC-01B

Reply Not acceptable by PO

RECOVERY PROCEEDINGS AS PER SECTION 79

Notification 26/2022

As an outcome of the recent 48th GST council meeting, the manner of dealing with difference in liability reported in statement of outward supplies (GSTR-1) and that reported in return (GSTR-3B) has been codified in the form of Rule 88C of the CGST Rules. This rule is likely to affect the taxpayers in case of any discrepancies between the supplies reported in GSTR-1 and GSTR-3B. The onus will be on the taxpayers to ensure compliance.

➢ The First Question that arises

The first question that arises in mind is whether this rule has got a statutory backing? The answer to this question apparently seems to be a yes. **Section 75(12) of the CGST Act provides for direct recovery of unpaid or short-paid self-assessed tax as per GSTR-3B without following the demand procedures laid down under the CGST Act**. The Finance Act, 2021 has amended this section by inserting an explanation to provide that the expression "self-assessed tax" shall include the tax payable in respect of details of outward supplies furnished in form GSTR-1, but not included in the return furnished in form GSTR-3B. This explanation extended statutory power to department for direct recovery of tax in a situation of difference between the output liability reported in GSTR-1 and actual tax discharged in GSTR-3B for the relevant period. However, the provision was silent on grant of any opportunity of being heard before initiating recovery proceedings which was later clarified vide a benevolent circular.

RULE 59

Rule 59 has also been amended to provide that in case where intimation is received by registered person under Rule 88C, such person shall not be allowed to furnish GSTR-1 for a subsequent tax period, unless he has either deposited the amount specified in intimation or has furnished a reply explaining the reasons for any amount remaining unpaid. It was stated in the 48th GST council meeting that this would facilitate taxpayers to pay/ explain the reason for the difference in such liabilities reported by them, without intervention of the tax officers. Here, it would be interesting to see whether any reply by the taxpayer explaining the differences would suffice or such reply will have to be to the satisfaction of the officer.

- The newly inserted rule has made the GSTR-1 and GSTR-3B reconciliation an indispensable time-sensitive exercise wherein a limited window of 7 days has been provided to reconcile the difference and take a call either to pay or to explain the differences.

RULE 138

Further, the newly inserted rule does not provide for any sort of extension of the strict time limit of 7 days. The inaction would not just trigger the direct recovery action by the department but also block filing of GSTR-1 for the subsequent periods. Since there is mandate of sequel filing of GSTR-1 and GSTR-3B under Section 39, effectively, GSTR-3B can also not be filed for subsequent periods unless this difference is sorted. In case, default in filing GSTR-1 or GSTR-3B continues for one more tax-period, filing of **E-way bill will also be restricted under Rule 138E** rendering the businesses completely helpless for movement of any goods under the cover of E-way bill and thereby, disrupting the entire business chain.

INTEREST CALCULATION IN NOTICES WITH EXAMPLES

Notification No. 9/2022-CT

The provisions of Sec 110 (c) & 111 of the Finance Act, 2022 are applicable w.e.f. 5th July,2022

Section 50(3) of CGST ACT,2017 Amendment w.e.f .1.07.2017 (Section 111) RETROSPECTIVELY

To provide that interest will be payable on wrongly availed ITC only when same is UTILISED.

RULE 88B inserted N 14/2022

MANNER OF CALCULATING INTEREST ON DELAYED PAYMENT OF TAX

Section 49(10) of CGST ACT,2017 Amendment w.e.f. 5.07.2022 (Sec 110 (c))

- To provide for transfer of balance in E-cash ledger of a registered person to E-cash ledger of CGST and IGST of distinct person (i.e. another registration of same entity having same PAN).
- CONDITION :- if the transferor unit is not having any outstanding liability.

RULE 87(14) inserted N 14/2022

Above transfer of Tax, Interest, Penalty, Fee or any other amount e.g Pre Deposit is allowed in FORM GST PMT-09

Notification No. 14/2022-CT

RULE 88B

MANNER OF CALCULATING INTEREST ON DELAYED PAYMENT OF TAX

RETROSPECTIVE AMENDMENT w.e.f. 01.07.2017

(1) In case, where the **supplies made during a tax period** are declared by the registered person in the return for the said period and

the said return is furnished after the due date in accordance with provisions of **section 39,**

EXCEPT where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period,

- **Interest** on tax payable in respect of such supplies shall be calculated on the **portion of tax which is paid by debiting the electronic cash ledger,**

Net

- **for the period of delay in filing the said return beyond the due date,**
- **at such rate as may be notified under sub-section (1) of section 50.**

18 %

Notification No. 14/2022-CT

RULE 88B

MANNER OF CALCULATING INTEREST ON DELAYED PAYMENT OF TAX

(2) In all other cases, where interest is payable in accordance with sub section (1) of section 50, such as short payment of tax, non payment of tax etc.

- **Interest** calculated on amount of tax which remains unpaid
  - Gross
- For the period starting from the date on which such tax was due to be paid till the date such tax is paid
- at such rate as may be notified under sub-section (1) of section 50.
  - 18 %

Amendment in section 50

6 Interest on delayed payment of tax.

Budgetary Amendment (Notified on 1st June, 21 vide Not. 16/2021-CT Effective date 01.7.2017)

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

~~[1][Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be levied on that portion of the tax that is paid by debiting the electronic cash ledger.]~~

w.e.f. 01.07.2017

"Provided that the interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.".

Impact

- **Retrospective amendment** made that interest to be paid on Net liability and not on gross liability in case of short payment of Tax with effect from 01.07.2017.
- **Right to claim refund arises, wherever the interest has been paid on gross GST liability**.

Analysis with Examples

This provision **does not give relief** on the following amounts:-

- On **Any unpaid tax amount, even if the balance is lying in electronic cash / credit ledger**. E.g Jan (Output Rs. 100000- 80000 credit) Rs. 15000 deposited in Cash Ledger on 24th Feb , return filed on 26th March , Interest will be on 20000 from 21st Feb to 26th March.
- **Tax payable in one tax period but paid later with subsequent return, would not enjoy such relief even when paid through ITC** . As the words in poviso says, Payable and declared in the return for the said period.

eg. Jan return filed NIL. Jan (Output Rs. 100000- 80000 credit) added in Feb ,2021 return. The same was paid using the carried forward ITC in the month of Feb, 2021. But the interest on tax of Rs. 1,00,000/- for the period of delay is to be paid, even if the same is paid by ITC. **(Rule 88B(2))**

However, if Jan return is delayed and filed in March, interest will be charged on Rs. 20000/- for the period of delay. **(Rule 88B(1))**

- **Return not filed and tax not paid upto initiation of any proceedings under Section 73/74** in respect of such tax period would not get this benefit even when amount is lying in Cash / Credit ledger of the taxpayer.

Notification No. 14/2022-CT

RULE 88B

MANNER OF CALCULATING INTEREST ON DELAYED PAYMENT OF TAX

(3) In case, where interest is payable on the amount of input tax credit wrongly availed and utilized in accordance with sub-section (3) of section 50,

- **Interest** calculated on amount of input tax credit wrongly availed and utilised,
- For the period starting from the date of utilization of such wrongly availed input tax credit till the date of reversal of such credit or payment of tax in respect of such amount
- at such rate as may be notified under sub-section (1) of section 50.

18%
(Budget 2022 change applicable from date of enactment)

EXPLANATION TO SUB-SECTION (3) OF RULE 88B

(1) input tax credit wrongly availed shall be construed to have been utilized,

- when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed,
- and the extent of such utilization of input tax credit shall be the amount by which the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed.

For example, if ITC of Rs. 60,000 is availed wrongly in January 2022 and the closing balance of ITC after March 2022 GSTR-3B return is Rs.40,000. Rs.20,000 of wrongly availed ITC is deemed to have been utilized in the month of March 2022.

(2) the date of utilization of such input tax credit shall be taken to be, —

(a) The due date, on which the return is to be furnished under section 39 or the actual date of filing of the said return, whichever is earlier, if the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, on account of payment of tax through the said return; or

e.g DRC-03

(b) the date of debit in the electronic credit ledger when the balance in the electronic credit ledger falls below the amount of input tax credit wrongly availed, in all other cases.

Continuing with the example, the date of utilization of wrong ITC of Rs.20,000 would be:
I. The date of filing of GSTR-3B return (or)
II. Due date for filing the said return, whichever is earlier.
Hence, the taxpayer cannot reduce the interest liability on utilization of wrong credit, by delaying the filing of GSTR-3B.

Mr. Ram claimed ineligible ITC of Rs 60000 in the month of January, 2022. February return was NIL. The ITC amount of Rs 60000 was c/f in E-Credit Ledger in March, 2022. In March, 2022 an outward supply involving tax of Rs 40000.00 wherein the said amount was used by him. The balance in ECrL was Rs. 20000/- He reversed the entire Incorrect ITC in June,2022. June, 2022 return filed on 22nd July,2022.

Case 1-Return for the Month of March,22 is filed on 15th April,2022

Amount= 40000 (60000-20000) (Balance fall below-Exp(1))

Period= Date of utilization till Date of Reversal

(Return Furnished or Due to be furnished whichever is earlier-Exp (2)) 22nd July,2022

15th April, 2022 till 22nd July, 2022

Rate= 18%

Case-2-Return for the Month of March,22 is filed on 25th April,2022

Amount= 40000 (60000-20000) (Balance fall below-Exp(1))

Period= Date of utilization till Date of Reversal

(Return Furnished or Due to be furnished whichever is earlier-Exp (2)) 22nd July,2022

20th April, 2022 till 22nd July, 2022

Rate= 18%

18

NON-PAYMENT OF INTEREST ON DELAYED PAYMENT OF TAX THROUGH CREDIT LEDGER

Section 50 of the CGST Act clearly states that Interest is required to be paid only on the Portion of Liability Paid through Cash ledger . As regards to the liability paid through Credit ledger, Interest is not applicable. In the instant case the liability has been disposed off only through credit ledger as already explained above.

Section 50(1) "Interest on delayed payment of tax"

Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen per cent., as may be notified by the Government on the recommendations of the Council.

*Provided that the **interest on tax payable in respect of supplies** made during a tax period and declared in the return for the said period furnished after the due date in accordance with the provisions of section 39, except where such return is furnished after commencement of any proceedings under section 73 or section 74 in respect of the said period, **shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.***

JURISPRUDENCE

M/S. F1 AUTO COMPONENTS P LTD VERSUS THE STATE TAX OFFICER , CHENNAI 2021 (7) TMI 600 - MADRAS HIGH COURT

Partly set aside the order passed by the Revenue Department to the extent that **interest on remittances by way of adjustment of electronic credit register is not leviable**, in a matter challenging levy of interest under Section 50 of the Central Goods and Services Tax Act, 2017 (**"the CGST Act"**) on reversal of wrongly availed Input Tax Credit (**"ITC"**) and upheld the levy of interest on the belated cash remittance. Held that, the interest on cash remittances is compulsory and mandatory. Further held that, in a case where the claim of ITC by an assesse is erroneous, then the question of Section 42 of the CGST Act does not arise at all, since it is not the case of mismatch, one of wrongful claim of ITC.

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MADRAS Maansarovar Motors (P.) Ltd. v. Assistant Commissioner, Chennai [2020] 121 taxmann.com 135 (Madras) HIGH COURT

Interest on delayed payment of tax - Whether proviso to section 50 inserted by section 100 of Finance (No.2) Act, 2019 which stated that interest on delayed remittance of tax is **leviable only on that portion of output GST liability which is discharged by way of cash** and effective date of amendment was not specified would operate retrospectively from 1-7-2017 and accordingly no interest would be levied on tax remitted by reversal of available ITC - Held, yes
The petitioners had challenged the levy interest on remittances of tax by adjustment of available ITC on ground that (i) the credit was available even prior to the arising of the output tax liability and hence the question of delay does not arise (ii) no opportunity was granted prior to raising of the impugned demand and consequential proceedings (iii) **interest is a measure of compensation and since ITC is already available in the electronic ledger, there is no question of the same being due to the revenue** (iv) the proviso to section 50 which states that interest shall be levied only on part paid in cash has been inserted to set right an anomaly and is therefore retrospective in operation.

Pratibha Processors v. Union of India 1996 taxmann.com 72 (SC)/[1996] 88 ELT 12 (SC)[11-10-1996] [1996] 1996 taxmann.com 72 (SC) SUPREME COURT OF INDIA
Sections 61(1) and 61(2) of the Customs Act, 1962 - Interest on warehoused goods - interest is linked to the duty payable - when goods wholly exempted from payment of duty at the time of removal from warehouse, no interest is payable - **payment of interest under Section 61(2) is solely dependent upon the factual liability to pay the principal amount**

Refex Industries Ltd. v. Assistant Commissioner of CGST & Central Excise[2020] 114 taxmann.com 447 (Madras) HIGH COURT OF MADRAS

Section 50 of the Central Goods and Services-tax Act, 2017/Section 50 of the Tamil Nadu Goods and Services Tax Act, 2017 - Interest on delayed payment of tax - Assessment year 2017-18 - Whether proviso to section 50(1) as per which **interest shall be levied only on that part of tax which is paid in cash, has been inserted with effect from 1-8-2019, is clarificatory in nature and, thus, it operates retrospectively** - Held, yes - Whether, therefore, where assessee filed its return belatedly for relevant assessment year, **interest to be remitted on tax accompanying return could be demanded only on cash component of tax remitted belatedly and not on Input Tax Credit (ITC) available with Department** - Held, yes [Paras 15 and 17]
The proper application of section 50 is one where interest is levied on a belated cash payment but not on ITC available all the while with the department to the credit of the assessee. The latter being available with the department is, neither belated nor delayed. [Para 12]

Sumilon Polyster Ltd.v. Union of India [2022] 145 taxmann.com 185 (Gujarat) HIGH COURT OF GUJARAT

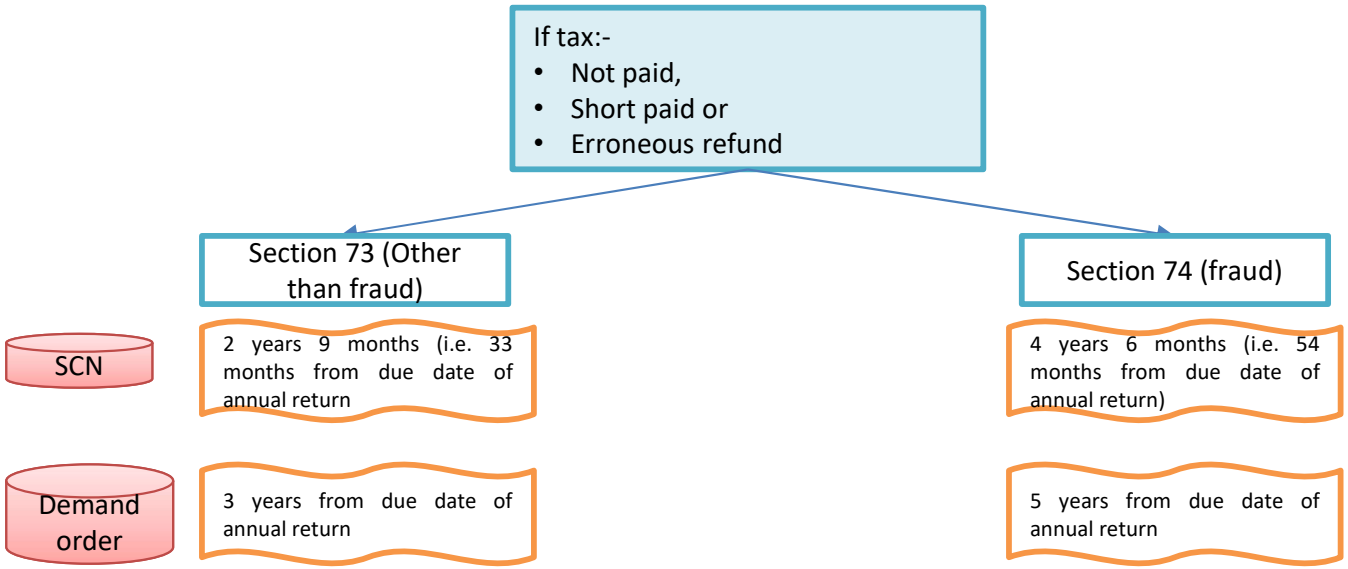
In mean time, amendment was brought in section 50(1) with effect from 1-7- 2017 by section 112 Finance Act, 2021 - It was submitted that after said amendment, where tax was payable in respect of supplies made during a tax period and declared in return for said period furnished after due date in accordance with provisions of section 39, except where such return was furnished after commencement of any proceedings under section 73 or section 74 of said period**, interest would be payable on portion of tax which is paid by debiting electronic cash ledger** - In view of above submissions, these petitions were to be disposed of as having become infructuous and respondents were to be directed to give effect to aforesaid amendment [Section 50 of Central Goods and Services Tax Act, 2017 /Gujarat Goods and Services Tax Act, 2017 - Section 112 of the Finance Act, 2021] [Paras 5.2, 5.3, 6 and 7] [In favour of assessee]

Prasanna Kumar Bisoi v. Union of India [2021] 125 taxmann.com 53 (Orissa) HIGH COURT OF ORISSA
Since GST council in its 39th meeting held on 14-3-2020 decided **that interest on delay in payment of GST was to be charged on net cash tax liability** retrospectively w.e.f. 1-7-2017/Competent Authority was to be directed to dispose of 'representation' filed by assessee with a prayer not to charge interest on availed input tax credit, keeping in view decision taken in 39th meeting of GST Council

TIME LIMITS

Section 73(2) Time Limit

The proper officer is required to issue the show-cause notice **3 months** before the time limit. The maximum time limit for the order of payment is **3 years** from the due date for filing of annual return for the year to which the amount relates.


If tax:-
• Not paid,
• Short paid or
• Erroneous refund
Section 73 (Other than fraud)
Section 74 (fraud)
SCN
2 years 9 months (i.e. 33 months from due date of annual return
4 years 6 months (i.e. 54 months from due date of annual return)
Demand order
3 years from due date of annual return
5 years from due date of annual return

Time limit u/s 73 and 74 Issue of Show Cause Notice & Order

Sr. No.	Relevant F.Y. to which the demand relates	Due date for furnishing the AR in FORM GSTR-9	Last date for issuance of the show cause notice as per S.73(2) r/w. S.73(10)	Last date for issuance of the show cause notice as per S.74(9) r/w. S.74(10)	Last date for issuance of order as per S.73(9) r/w. S.73(10)	Last date for issuance of order as per S.74(9) r/w. S.74(10)
1	2017-18	05.02.2020 07.02.2020	30.09.2023	05.08.2024 07.08.2024	31.12.2023	04.02.2025 06.02.2025
2	2018-19	31.12.2020	31.01.2024	30.06.2025	30.04.2024	30.12.2025
3	2019-20	31.03.2021	31.05.2024	30.09.2025	31.08.2024	30.12.2025
4	2020-21	28.02.2022	27.11.2024	27.08.2026	27.02.2025	27.02.2027
5	2021-22	31.12.2022	30.09.2025	30.06.2027	30.12.2025	30.12.2027

NOTIFICATION No. 56/2023-CT Dated: 28.12.2023

NOTIFICATION No. 09/2023-CT Dated: 31.03.2023

EXTENSION OF SCN TIME PERIOD UNDER SCANNER?

- **M/S NEW INDIA ACID BARODA PVT. LTD. Versus UNION OF INDIA IN THE HIGH COURT OF GUJARAT AT AHMEDABAD R/SPECIAL CIVIL APPLICATION NO. 21165 of 2023**

AND

- **M/S GAJANAND MULTISHOP THROUGH PANKAJKUMAR ROSHANLAL GANDHI Versus UNION OF INDIA IN THE HIGH COURT OF GUJARAT AT AHMEDABAD R/SPECIAL CIVIL APPLICATION NO. 20227 of 2023**

It was submitted that there is no ground mentioned in the impugned notification no.9 of 2023 dated 31.03.2023 extending the time period for issuance of the show-cause-notice under Sub-section 10 of Section of the Central Goods and Service Tax Act, 2017 (for short "the Act") while exercising the powers under the Central Board of Indirect Taxes and Customs under Section 168A of the Act. **It was submitted that after the year 2022 there was no COVID Pandemic in existence and accordingly the provisions of Section 168A of the Act would not be applicable for extension of time**. He also invited the attention of the Court to the explanation to section 168A of the Act and submitted that none of the eventuality mentioned therein existed when the impugned notification was issued by the Central Board of Indirect Taxes and Customs.

It was therefore submitted that such extension is not sustainable in law and is contrary to the provision of Section 168A of the Act.

Considering the above submissions, issue Notice returnable on 8 th February, 2024. By way of ad-interim relief, no final order shall be passed by the respondent authority pursuant to the show-cause-notice issued during the period extended by the impugned notification without permission of the Court till the next date of hearing. Direct service is permitted.

[2023] 156 taxmann.com 656 (Gujarat)

HIGH COURT OF GUJARAT

SRSS Agro (P.) Ltd.

v.

Union of India

Where petitioner submitted that notification dated 31.03.2023 extending time limit specified under Section 73 by virtue of powers under Section168A is unjustified as extension has to be for special circumstances and having once extended period by virtue of notification dated 05.07.2022, no subsequent extension could be made, notice was to be issued to respondent-state returnable on 30.11.2023

Unjustified extension of limitation - Case of petitioner that notification dated 31.03.2023 extending time limit specified under Section 73 by virtue of powers under Section168A is unjustified as extension has to be for special circumstances and having once extended period by virtue of notification dated 05.07.2022, no subsequent extension could be made – Held: notice was to be issued to respondent returnable on 30.11.2023 [Section 73, read with section168A of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act 2017] [para 3]

CHAPTER VI

AMENDMENT TO THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

7. After section 168 of the Central Goods and Services Tax Act, 2017, the following section shall be inserted, namely:— Insertion of new section 168A in Act 12 of 2017.

'168A. (*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 of complied with due to *force majeure*. Power of Government to extend time limit in special circumstances.

(*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.'.

At present, there is no such ground attributable to force majeure which affects the implementation of any of the provisions of the act (GST Act) throughout India. Thus the invocation of Section 168A is an act of grave misuse of legislative provisions.

SECTION 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.]

- **Gujarat HC M/s NEW INDIA ACID BARODA PVT. LTD. vs UNION OF INDIA**

Second Extension of GST Notice Time Limit in 2023 under Challenge for violation of S. 168A,

- **Gujarat HC issues Notice GAJANAND MULTISHOP THROUGH PANKAJKUMAR ROSHANLAL GANDHI [R/SPECIAL CIVIL APPLICATION NO. 20227 of 2023, Gujarat HC]**

In summary, the recent notifications extending the time limits for issuing Goods and Services Tax demand orders under Section 73(9) raise significant concerns regarding their constitutionality and adherence to the statutory framework.

[2023] 146 taxmann.com 531 (Kerala)

HIGH COURT OF KERALA

Pappachan Chakkiath

v.

Assistant Commissioner, of SGST Department, North Paravur*

When time limit for issuance of order for financial year 2017-18 was extended till 30-9-2023, automatically time limit for show cause notice would also be extended with reference to that date

FAIZAL TRADERS PVT LTD
BROTHERS TOWER, ALATHUR PO, PALAKKAD-678541 REP BY ARIF K, DIRECTOR
Vs
DEPUTY COMMISSIONER CENTRAL TAX AND CENTRAL EXCISE, PALAKKAD DIVISION
METTUPALAYAM STREET, PALAKKAD

- Petitioner's claim for input tax credit for the period from July 2017 to September 2017 has **been denied**

FACTS

- Petitioner has challenged the assessment order on the ground that the same is barred by limitation - Inasmuch as the last date for filing the return in GSTR-9 was 07.02.2020, and therefore, the last date for completing the proceedings under Section 73(9) and serving the demand notice was 07.02.2023; that the last date for completing the proceedings under Section 73(9) and serving the demand notice was 07.02.2023 - **Petitioner has also impugned the notification issued by the 2nd respondent bearing No.13/2022-Central Tax dated 05.07.2022**

- **whereby the time limit specified under Section 73(10) for issuance of the order under 73(9) was extended up to 30.09.2023 and notification No.09/2023-Central Tax dated 31.03.2023**
- **Whereby the time limit was extended to 31.12.2023 - Petitioner contends that both these notifications purported to be issued under Section 168A of the CGST Act, are beyond the powers conferred on the 2nd respondent under Section 168A of the Act; that the force majeure was not present for extending the time for completion of proceedings in passing the assessment order under sub-section (9) of Section 73 and thus, the impugned notification is bad in law and is ultra vires the provisions of Section 168A of the CGST/SGST Act.**

Held: Valid Extention. What is Force Majure not discussed

Held: If there is force majeure as defined in Section 168A, the Government is empowered to extend the limitation period for taking actions which could not be completed or complied with due to force majeure - No one can deny that COVID-19 was a force majeure as it was a pandemic that caused large-scale human tragedy and suffering all over the world and paralyzed the world, including economic activities - It was observed that the Central and the State Governments were working with reduced staff, along with staggered timings and exemption to certain categories of employees from attending offices, from time to time during the COVID period - A conscious policy decision was taken not to do enforcement actions in the initial period of implementation of the GST law - Therefore, no action for scrutiny, audit, etc., could be undertaken during the initial period of GST implementation - As the due date for filing the annual return for Financial Year 2017-18 was 07.02.2020, based on which limitations for demand under the Act are linked - As Covid happened immediately after that, thereby the audit and scrutiny for the Financial Year 2017-18 were impeded due to the various restrictions during the Covid period - Therefore, the decision was taken to extend the limitation under Section 73 for the Financial Year 2017-18 for issuance of the order in respect of demand linked with due date of annual return till 30.09.2023 under the powers available under Section 168A of the GST Act - How much time could have been extended considering the pandemic is the discretion of the Executive, which has been taken based on the recommendation of the GST Council - **Bench does not find that the notifications impugned in the writ petition are ultra vires the provisions of Section 168A of the CGST/SGST Act -**

[2024] 163 taxmann.com 126 (Allahabad)[31-05-2024] HIGH COURT OF ALLAHABAD
Graziano Trasmissioni *v.* Goods and Services Tax (WRIT TAX NO. 1256 OF 2023 AND OTHS.)

ISSUE: Whether considering spread of COVID-19 pandemic (i.e. force majeure) during March, 2020 to February, 2022 can extended time granted to Adjudicating Authorities to pass adjudication orders with reference to proceedings for financial year 2017-18 upto 31-12-2023.

FACT: In the recent development, Allahabad high court, in a comprehensive order has dismissed all writ petition challenging the CBIC notification issued under section 168A. The notification extended the time limit for issuing notices and orders under Section 73 for the financial Year 2017-18 and 2018-19. The State Government had the power to issue notifications extending the time limit for adjudication orders due to the spread of the COVID-19 pandemic (i.e., force majeure), which persisted from March 15, 2020, to February 28, 2022. Exercising this power, the State Government extended the time granted to Adjudicating Authorities to pass adjudication orders for proceedings related to the financial year 2017-18 until December 31, 2023. The assessee challenged these impugned notifications.

HELD: The Court held that power to issue notifications extending the time limit for adjudication existed under Section 168A, read with sections 44 and 73 of Central Goods and Services Tax Act, 2017. NO EXCESSIVE EXTENSION OF TIME WAS GRANTED. Therefore, the writ petitions challenging the issuance of the impugned notifications must fail.

UNSIGNED ORDER

SRK Enterprises *v.* Assistant Commissioner (ST) [2023] 157 taxmann.com 93 (Andhra Pradesh) HIGH COURT OF ANDHRA PRADESH

GST : Where order is unsigned, it is no order in eyes of law and could not be covered under any mistake, defect or omission therein as used in Section 160 of the CGST Act 2017

RAMANI SUCHIT MALUSHTE VERSUS UNION OF INDIA AND ORS. - 2022 (9) TMI 1263 - BOMBAY HIGH COURT has held that unless signature is put on the order by the issuing authority, it will have no effect in the eyes of law therefore, the time to file appeal would begin from the date on which the signature of issuing authority was put on such order

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 notified1 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.

All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate 3[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].

2024(2) TMI 175 - ANDHRA PRADESH HIGH COURT M/S. SRI SRINIVASA ENTERPRISES VERSUS THE ASSISTANT COMMISSIONER OF STATE TAX, THE CHIEF COMMISSIONER OF STATE TAX, THE STATE OF ANDHRA PRADESH, THE DEPUTY ASSISTANT COMMISSIONER (ST) -II Principles of natural justice - petitioner submits that the order has not been signed and without signature there can be no order in the eyes of law - impugned order has been passed on a ground which was not mentioned in the show cause notice - **HELD THAT:- Following the judgements of the Co-ordinate Bench in M/S. SRI RAMA ENERGY SOLUTIONS VERSUS THE ASSISTANT COMMISSIONER (ST) , STATE OF ANDHRA PRADESH, THE UNION OF INDIA [2023 (11) TMI 1217 - ANDHRA PRADESH HIGH COURT], the impugned order is quashed only on the ground that it has not been signed.**

2024 (4) TMI 610 - TELANGANA HIGH COURT M/S. KUNDAN STEEL INDUSTRIES VERSUS ASSISTANT COMMISSIONER- Validity of assessment order - SCN as also the assessment order have not been signed by the 2nd respondent either digitally or physically as is otherwise required under Rule 26 of the Central Goods and Services Taxes Rules - HELD THAT:- It is relevant to take note of the recent decision of the High Court for the State of Andhra Pradesh in M/S. SRK ENTERPRISES, VERSUS ASSISTANT COMMISSIONER (ST) , BHEEMILI CIRCLE, VISAKHAPATNAM [2023 (12) TMI 156 - ANDHRA PRADESH HIGH COURT] wherein the Hon'ble Division Bench of the Andhra Pradesh High Court had under similar circumstances held we are of the view that Section 160 of CGST Act 2017 is not attracted. An unsigned order cannot be covered under - any mistake, defect or omission therein‖ as used in Section 160. The said expression refers to any mistake, defect or omission in an order with respect to assessment, re-assessment; adjudication etc and which shall not be invalid or deemed to be invalid by such reason, if in substance and effect the assessment, reassessment etc is in conformity with the requirements of the Act or any existing law.

Thus, the impugned order in the instant case also set aside, since it is an un-signed document which lose its efficacy in the light of requirement of Rule 26(3) of the CGST Rules 2017 and also under the TGST Act and Rules 2017. The show cause notice as also the impugned order both would not be sustainable and the same deserves to be and is accordingly set aside/quashed. However, the right of the respondents would stand reserved to take appropriate steps strictly in accordance with law governing the field

2024 (4) TMI 367 - TELANGANA HIGH COURT M/S. SILVER OAK VILLAS LLP VERSUS THE ASSISTANT COMMISSIONER (ST) , THE ADDITIONAL COMMISSIONER OF CENTRAL TAX, STATE OF TELANGANA, UNION OF INDIA, CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS -

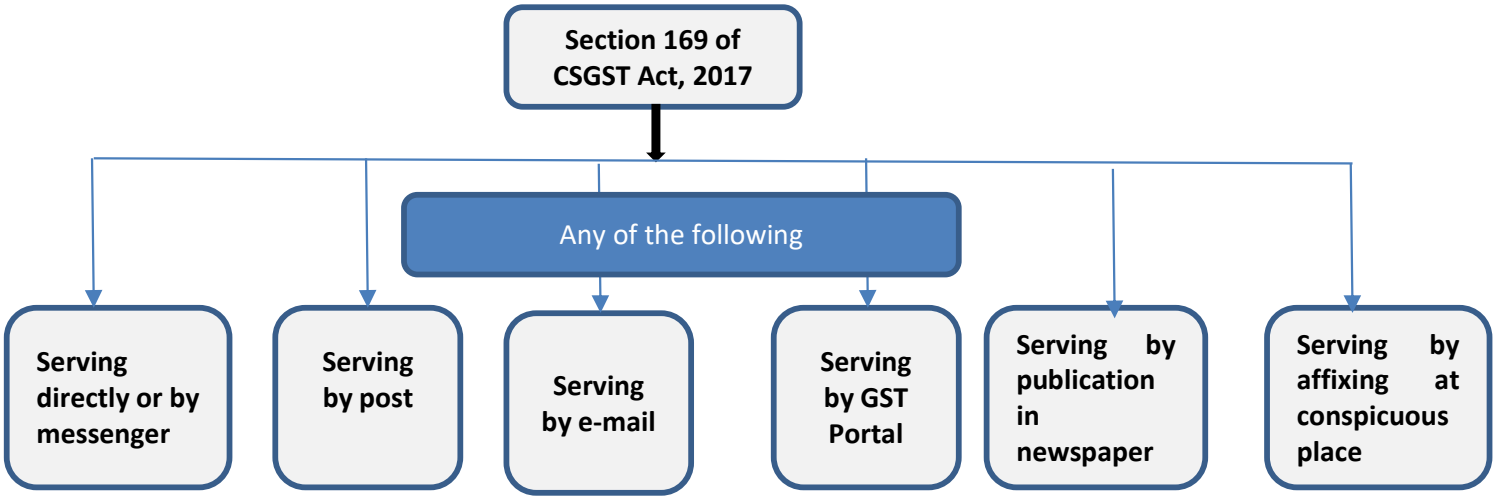
Validity Of show cause notice and unsigned assessment order - Unsinged order either digitally or physically as is otherwise required under Rule 26 of the Central Goods and Services Taxes Rules ("CGST") - HELD THAT:- We are of the considered opinion that the impugned order in the instant case also since it an un-signed document which lose its efficacy in the light of requirement of Rule 26(3) of the CGST Rules 2017 and also under the TGST Act and Rules 2017. The show cause notice as also the impugned order both would not be sustainable and the same deserves to be and is accordingly set aside/quashed. However, the right of the respondents would stand reserved to take appropriate steps strictly in accordance with law governing the field.

In case of Railsys Engineers (P.) Ltd. v. Additional Commissioner of Central Goods and Services Tax, Appeals-II* [2022] 141 taxmann.com 527, (Delhi) HIGH COURT OF DELHI held that In SCN issued and order passed thereafter did not bear signature of concerned officer, **Digital signature on these documents should have been appended** as implications of these documents were grave for assessee, Relevant provision did not suggest that orders need not be signed.

In case of M.S. Shoes East Ltd. v. Union of India*, [2016] 72 taxmann.com 94 (Delhi) HIGH COURT OF DELHI held that: An authority who makes corrections to a draft order is **statutorily obliged to sign final order and it is only thereafter that any other officer can attest a copy of said order to be true copy of original order; hence, certified copies of a draft and unsigned order have no legal status.**

In case of Roushan Kumar Chouhan v. Commissioner of State Tax*, High Court of Jharkhand, [2022] 142 taxmann.com 4:- Held That: Adjudication order - Show cause notice - Validity - Impugned show cause notice (SCN) was issued in standard format without striking out irrelevant portions and without stating specific contravention committed which was required to enable assessee to file reply - Writ petition was filed to quash said SCN, summary of SCN and consequential summary of order. SCN was vague and violates principle of natural justice - Further, Adjudication order was not served by department - Levy of penalty equal to tax in adjudication order indicates non-application of mind by officer concerned as SCN had been issued under section 73 which provides for maximum penalty of 10 per cent of tax - Impugned SCN, summary of SCN and summary of order were to be quashed

- **Service of Notice in certain circumstances**



RULE 142

Notice And Order For Demand Of Amounts Payable Under The Act

(1) The proper officer shall serve, along with the

(a) Notice issued under section 52 or section 73 or section 74 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130, a summary thereof **electronically in FORM GST DRC-01,**

(b) Statement under sub-section (3) of section 73 or sub-section (3) of section 74, a summary thereof electronically in **FORM GST DRC-02,** specifying therein the details of the amount payable.

1A. The proper officer shall, before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74, as the case may be, shall communicate the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.

2. Where, before the service of notice or statement, the person chargeable with tax makes payment of the tax and interest in accordance with the provisions of section 73(5) or, as the case may be, tax, interest and penalty in accordance with the provisions of section 74(5), or where any person makes payment of tax, interest, penalty or any other amount due in accordance with the provisions of the Act 2 whether on his own ascertainment or, as communicated by the proper officer under sub-rule (1A), **he shall inform the proper officer of such payment in FORM GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made by the said person in FORM GST DRC -04

(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in **Part B of FORM GST DRC-01A.**

3. Where the person chargeable with tax makes payment of tax and interest under section 73(8) or, as the case may be, tax, interest and penalty under section 74(8) **within 30 days of the service of a notice** under sub-rule (1),
or where the person concerned makes payment of the amount referred to in section 129(1) within seven days of the notice issued under sub-section (3) of Section 129 but before the issuance of order under the said sub-section (3), he shall intimate the proper officer of such payment in FORM GST DRC-03 and **the proper officer shall issue an intimation in FORM GST DRC-05** concluding the proceedings in respect of the said notice.

4. The representation referred to in section 73(9) or section 74(9) or section 76(3) or the reply to any notice issued under any section whose summary has been uploaded electronically **in FORM GST DRC-01 under sub-rule (1) shall be furnished in FORM GST DRC-06**.

5. A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in FORM GST DRC-07, specifying therein the amount of tax, interest and penalty, as the case may be, payable by the person concerned

6. The order referred to in sub-rule (5) shall be treated as the notice for recovery

7. Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in FORM GST DRC-08.

SERVICE OF NOTICE/ORDER ON PORTAL

CITATION	PARTICULARS
Baghel Trading Co. ***v.*** **State of U.P.** **[2023] 155 taxmann.com 95 (Allahabad)** **HIGH COURT OF ALLAHABAD**	**[Matter listed]** Appeals to appellate authority - Limitation period - Service of adjudication order - **Petitioner's case was that though impugned order was made available on portal as provided under section 169, but same did not amount to communication of order as stipulated in section 107 as an order can be said to be communicated only when person concerned comes to know about same** - HELD : Since matter required consideration, same was listed [Section 107, read with section 169, of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017] [Paras 6 and 9]

Section 107 vs. Section 169: The petitioner asserts that while the order may have been made available on the GSTN Portal (Goods and Services Tax Network Portal), as allowed under Section 169 of the GST Act, **this alone does not constitute communication of the order. According to the petitioner, an order can only be considered communicated when the relevant party becomes aware of it.**

Section 107(1): Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or **order is "communicated" to such person.**

CITATION	PARTICULARS
Pandidorai Sethupathi Raja *v.* Superintendent of Central Tax [2022] 145 taxmann.com 632 (Madras) HIGH COURT OF MADRAS	**[In favour of revenue]** Making an order available on common portal would tantamount to 'tendering' of that order to recipient - **There was no conscious intention on part of legislature to exclude 'uploading' as one of modes of service** - **Necessity for an alert by way of SMS/email that notice/order was uploaded on portal stood obviated as it was obligation of taxpayers to file returns monthly resulting in accessing portal at least once a month** – **Uploading of orders on common portal constitutes proper mode of service** [Section 169 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 37, 39 and 40]
New Grace Automech Products (P.) Ltd. *v.* State Tax Officer* [2023] 148 taxmann.com 9 (Madras) HIGH COURT OF MADRAS	**[In favour of revenue]** Service of order - Methods of - **Methods of service adumbrated in section 169 of TNGST Act, 2017 is not conjunctive but provide alternate methods of service** - Impugned order was uploaded or made available in common portal on same day - Therefore, there was no ground to interfere qua impugned order in writ petition [Section 169 of the Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 7, 8 and 11]

CITATION	PARTICULARS
Tvl. Alaghu Vivek *v.* Appellate Deputy Commissioner (ST)* **[2023] 153 taxmann.com 731 (Madras)** **HIGH COURT OF MADRAS**	In writ petitions, question was raised as to whether service of assessment order through web portal under section 169(1)(d) of CGST Act has to be considered as sufficient for purpose of reckoning limitation while filing appeal; **writ petitions in cases where petitioner had already received assessment orders through RPAD also were to be dismissed while in case where there was no receiving through RPAD same would be decided in writ petition** Notice - Service of assessment order - Period 2017-18 to 2020-21 - Assessee being aggrieved by assessment orders filed appeals - Appeals were rejected on ground that same were filed beyond period of limitation - Petitioner stated that there was a service of communication of Assessment Orders through web portal, but it was not sufficient for purpose of reckoning limitation - However, record indicated that petitioner had also received Assessment Orders through RPAD in all cases except one - HELD : Issue as to whether service of order through web portal under section 169(1)(d) of CGST Act, has to be considered as sufficient or not, had to be decided only in said one case - All other writ petitions were liable to be dismissed [Section 169 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 3 and 4] [Partly in favour of assessee]

[In favour of revenue]

Koduvayur Constructions *v.* Assistant Commissioner [2023] 153 taxmann.com 333 (Kerala) HIGH COURT OF KERALA

GST : **Making assessment order available in GST portal is an alternate mode of service; such service of assessment order cannot be challenged**

Notice, service of - Uploading on GST portal - Petitioner's GST registration was cancelled - Petitioner's case was that it was under impression that it had no GST liability to pay but petitioner was served assessment order on GST portal calling upon petitioner to pay an amount of Rs. 19,22,566 - Assessee alleged that there was no effective service of notice on petitioner by respondents and that unreasonable demand was raised by respondents - HELD : **Assessment order was made available on common portal - It was an alternative mode of service provided under section169(1) of CGST Act** - It was bounden duty of petitioner to have verified its common portal that was made available as per provision - Thus, contentions raised that assessment order was not served as per provisions of Act was untenable [Section169 of Central Goods and Services Tax Act, 2017/Kerala State Goods and Services Tax Act, 2017] [Para 7]

MERE SERVICE OF NOTICE ON PORTAL INVALID (INCOME TAX)

IN THE INCOME TAX APPELLATE TRIBUNAL DIVISION BENCH, "B" CHANDIGARH

Sant Kabir Mahasabha, 1030/25, Gurudwara Colony, Rohtak Road, Jind. Vs The CIT (Exemption), Chandigarh.

ld.CIT(E) has summarily rejected the application of the assessee without giving any opportunity of hearing to the assessee to present its case. **No notice of date of hearing was served by the ld.CIT(E), either through physical mode or through e-mail etc. That the notice of date of hearing was allegedly uploaded on Income Tax Portal and the assessee was not aware of uploading of any such notice** regarding date of hearing. That no service of notice was ever affected on the assessee

Merely uploading of information about the date of hearing on the Income Tax Portal **is not an effective service of notice** as per the provisions of Section 282 of the Income Tax Act. The impugned order of the ld.CIT(E) is, therefore, **not sustainable in the eyes of law**. The same is hereby set aside with a direction to the ld.CIT(E) to decide the appeal of the ITA No.84/CHD/2023 A.Y. 2022-23 3 assessee afresh after giving proper and adequate opportunity to the assessee to present its case. The ld. CIT (E) will serve notice of hearing through physical mode as well as through electronic mode upon the assessee.

Whether The Assessment Order Liable To Be Set Aside When The Notices Is Not Served Physically (Uploaded In Web Portal)

[2024] 158 taxmann.com 332 (Madras)

HIGH COURT OF MADRAS

Jak Communications (P.) Ltd.

v.

Deputy Commercial Tax Officer*

KRISHNAN RAMASAMY, J.
W.P. NO. 35453 OF 2023
W.M.P. NO. 35420 OF 2023
DECEMBER 19, 2023

- Notices were **uploaded by revenue authorities in their web portal. No notice was served physically to assessee**

- Subsequently, impugned assessment order was passed

- Assessee challenged assessment **order on plea that assessee was unaware of said notice** and that impugned order was passed in violation of principles of natural justice as neither any opportunity for filing reply nor opportunity of personal hearing was provided to assessee by revenue authorities

JUDGEMENT

It appears that notices and assessment order had been uploaded in web portal and same were not at all physically served to assessee –

Thus, Reason provided by assessee for being unaware about impugned notices appeared to be genuine. Hence, impugned order was liable to be set aside [Section 169, read with section 73, of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017 - Article 226 of Constitution of India

[2024] 159 taxmann.com 418 (Allahabad)

HIGH COURT OF ALLAHABAD

Shyam Shanti Scrap Traders

v.

State of U.P.*

SAUMITRA DAYAL SINGH AND MANJIVE SHUKLA, JJ.

WRIT TAX NO. 118 OF 2024

FEBRUARY 7, 2024

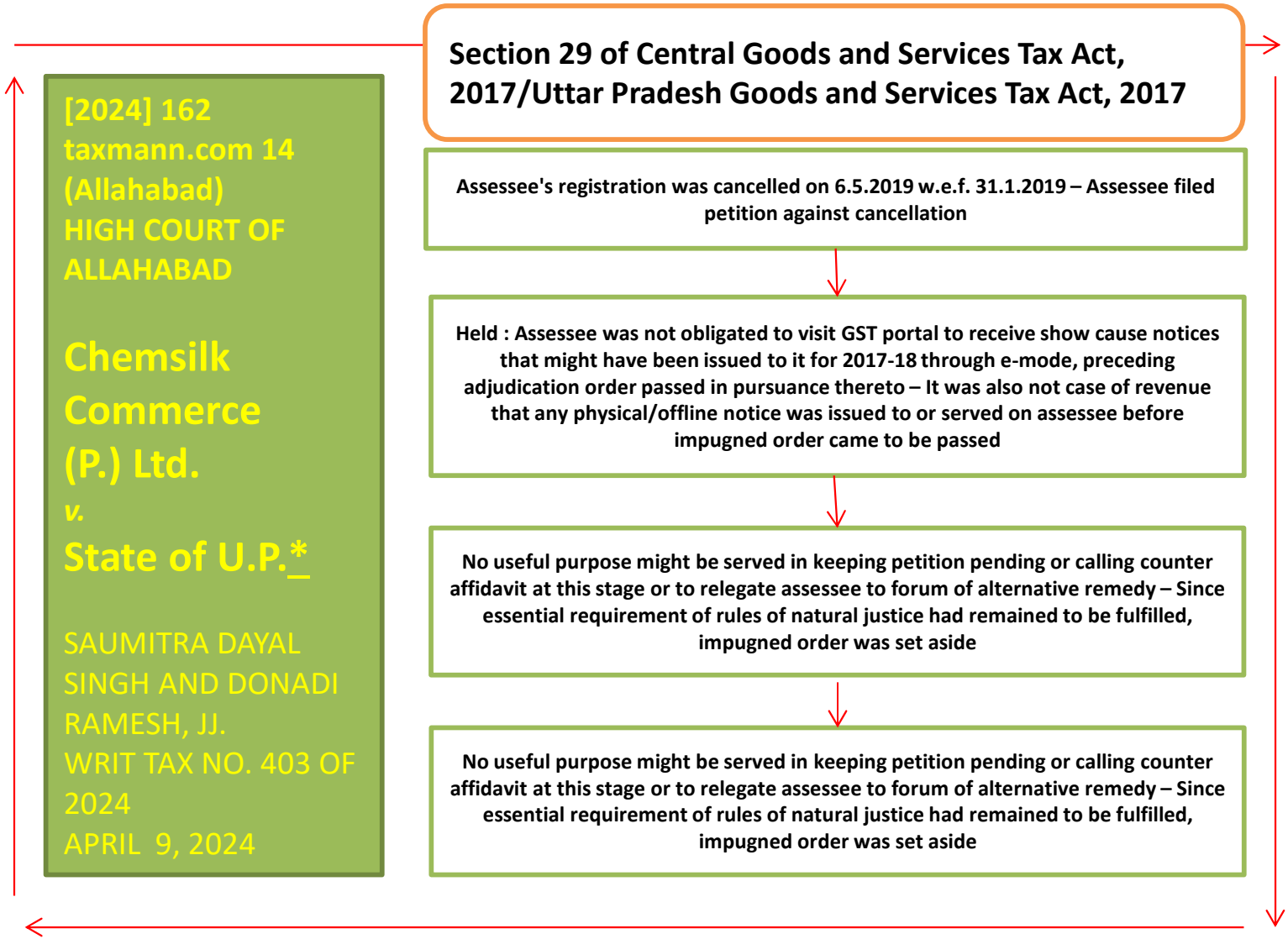
- Registration of petitioner-assessee was cancelled with effect from 28-2-2022 and Said registration was not revived,

- Impugned adjudication order came to be passed on 17-10-2023 **no physical/offline notice was issued to or served on assessee before impugned order came to be passed. It was stated that SCN, were issued through e-mode**

HELD

Since registration of **assessee was already cancelled, assessee was not obligated to visit GST portal to receive show cause notices** - Essential requirement of rules of natural justice had remained to be fulfilled

Fresh order was to be passed after affording opportunity of personal hearing to assessee [Section 75, read with section 29, of Central Goods and Services Tax Act, 2017/ Uttar Pradesh Goods and Services Tax Act, 2017]


Section 29 of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017
[2024] 162 taxmann.com 14 (Allahabad)
HIGH COURT OF ALLAHABAD
Chemsilk Commerce (P.) Ltd.
v.
State of U.P.*
SAUMITRA DAYAL SINGH AND DONADI RAMESH, JJ.
WRIT TAX NO. 403 OF 2024
APRIL 9, 2024
Assessee's registration was cancelled on 6.5.2019 w.e.f. 31.1.2019 – Assessee filed petition against cancellation
Held : Assessee was not obligated to visit GST portal to receive show cause notices that might have been issued to it for 2017-18 through e-mode, preceding adjudication order passed in pursuance thereto – It was also not case of revenue that any physical/offline notice was issued to or served on assessee before impugned order came to be passed
No useful purpose might be served in keeping petition pending or calling counter affidavit at this stage or to relegate assessee to forum of alternative remedy – Since essential requirement of rules of natural justice had remained to be fulfilled, impugned order was set aside
No useful purpose might be served in keeping petition pending or calling counter affidavit at this stage or to relegate assessee to forum of alternative remedy – Since essential requirement of rules of natural justice had remained to be fulfilled, impugned order was set aside

Show Cause Notices to Taxpayers Under GST Act Mandatory to Upload on Website – Mere E-Mail is not Suffice.[Akash Garg Vs State of M.P, vide order dated 19.11.2020]

The Honourable Madhya Pradesh Court in case of Akash Garg Vs State of M.P, vide order dated 19.11.2020 held that statutory procedure **prescribed for communicating show-cause notice or order under Rule 142(1) of CGST Act is required to be followed mandatorily by the revenue.**

- Rule 142 prescribes the **manner to upload show-cause notices on Website.**
- Thus, a mere **e-mail of show-cause notices to the taxpayer would not suffice**. Upload of such notices on the website is mandatory.

Accordingly, instant petition stands allowed with liberty to the revenue to follow the procedure prescribed under Rule 142 of CGST Act by communicating the show-cause notice to the petitioner by appropriate mode thereafter to proceed in accordance with law.

5.2) **The following case laws are worth considering where in the Hon'ble courts have duly held that DRC forms are merely a summary and proper procedure as laid down in Rule 142 must be followed i.e The proper officer shall serve DRC on portal, along with the Notice and order .**

Sr. No.	Name and Citation	Particulars
1	2022 (4) TMI 1026 - JHARKHAND HIGH COURT M/S. GODAVARI COMMODITIES LTD. VERSUS THE STATE OF JHARKHAND, COMMISSIONER, STATE TAX, JOINT COMMISSIONER OF STATE TAX (ADMINISTRATION) RANCHI, DEPUTY COMMISSIONER OF STATE TAX, RANCHI., ASSISTANT COMMISSIONER OF STATE TAX, THE PRINCIPAL COMMISSIONER, CENTRAL GST & CENTRAL EXCISE, RANCHI.	Validity of "summary of the order" as contained in Form-GST DRC 07 dated 11.09.2020 - Rule 142(1) of the GST Rules - specific case of the petitioner is that no show cause notice was ever issued to the petitioner and even in the summary of the show cause notice, no time line was provided as to when the petitioner was to submit its reply - Whether the very initiation of the adjudication proceeding without issuance of show cause notice is void ab initio and any consequential adjudication order passed thereto is non est in the eye of law as the same has been passed without issuance of proper show cause notice and, thus, amounts to violation of principles of natural justice.
2	[2021 (10) TMI 880 - JHARKHAND HIGH COURT] M/s NKAS Services Private Limited Vs. State of Jharkhand and ors,	'Summary of Show Cause Notice' was issued and Adjudication Order was passed pursuant thereto, this Court has observed that the impugned show cause notice as contained in Annexure-1 does not fulfill the ingredients of a proper show-cause notice and thus amounts to violation of principles of natural justice, the challenge is entertainable in exercise of writ jurisdiction of this Court. A summary of show-cause notice as issued in Form GST DRC-01 in terms of Rule 142(1) of the CGST/JGST Rules, 2017 cannot substitute the requirement of a proper show-cause notice - the Commissioner of State Tax Department are directed to issue appropriate guidelines/circular/notification elaborating therein the procedure which is to be adopted by the State Tax authorities regarding the manner of issuance of Show Cause Notice, adjudication and recovery proceedings, so that proper procedure is followed by the State Tax authorities in conduct of the adjudication proceedings, as huge revenue of the State is involved and it would be in ultimate interest of the Respondent-State of Jharkhand itself that the adjudication proceedings are conducted after following due procedure and process of law. The summary of show cause notices, both dated 14.03.2020, Adjudication Order Dated 13.08.2020 and summary of orders, both dated 11.09.2020, issued against the petitioner in both the writ petitions, are hereby, quashed

3	**[2021] 124 taxmann.com 295 (Allahabad)** **HIGH COURT OF ALLAHABAD** **Singh Traders** **v.** **Additional Commissioner, Grade-2***	**GST : Where Competent Authority by an order passed under section 129(3) detained goods of assessee under transport, since service of detention order on driver of truck would not fall within any of category specified from clauses (a) to (j) of section 169(1), same could not be deemed to be a valid service and thus, period of limitation would commence from day when a certified copy/copy of order is made available to the assessee.**
4	Tanay Creation Vs State of Gujarat [2021] 133 taxmann.com 78 (Gujarat)	"Owner of goods was not afforded opportunity of personal hearing and no show cause notice was issued to him or owner of conveyance - Order was served on truck driver instead of owner of goods - Impugned order was quashed and set aside as there was a complete breach of principles of natural justice - Department was directed to issue a fresh show cause notice [Sections 129 and 130 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act 2017] [Paras 18, 21 and 22]"
5	**Madhya Pradesh Court in case of Akash Garg Vs State of M.P vide order dated 19.11.2020**	**Held that statutory procedure prescribed for communicating show-cause notice or order under Rule 142(1) of CGST Act is required to be followed mandatorily by the revenue.**

DATE OF COMMUNICATION ????

[2021] 133 taxmann.com 222 (Bombay) Meritas Hotels (P.) Ltd.*v.* State of Maharashtra*

GST : Date of communication of order by e-mail, and not subsequent date of uploading in GST portal, was to be considered for computing time-limit for filing appeal with Appellate Authority

Date of Uploading order is to be considered as Communication

[2022] 142 taxmann.com 444 (Andhra Pradesh)Navya Foods (P.) Ltd. *v.* Superintendent of Central*

GST : Time period to file appeal would start only when order was uploaded on GST portal even if physical copy of adjudication order was handed over to petitioner earlier

[2021] 124 taxmann.com 98 (Gujarat)

HIGH COURT OF GUJARAT

Gujarat State Petronet Ltd.

v.

Union of India*

GST : Where even though physical copy of adjudication order was handed over to assessee, limitation period to file appeal would start only when adjudication order was uploaded on GST portal

Maintainability of Appeal: In case the Petitioner awaited for impugned order to be uploaded on portal

[In favour of Taxpayer]

K.P. Shaneej Versus The Joint Commissioner (Appeals) I, Additional Charge Of Joint Commissioner (Appeals) II, State Goods And Services Tax Department, Kozhikode-2022 (7) Tmi 701 - Kerala High Court

Maintainability of appeal - appeal filed within the time limitation or not - It is submitted that if the date 12.12.2019 is taken as a relevant date for ascertaining the period of limitation, the appeals filed on 17.02.2020 were within the period of limitation

HELD THAT:- Reliance placed in the case of JOSE JOSEPH, VERSUS ASSISTANT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, ALAPPUZHA, ADDITIONAL COMMISSIONER (APPEALS) , KOCHI, THE UNION OF INDIA [2022 (1) TMI 50 - KERALA HIGH COURT] where it was held that **When the mode of appeal prescribed by Rules is only the electronic mode, the time limit of three months can start only when the assessee had the opportunity to file the appeal in the electronic mode. The assessee cannot be blamed if he waited for the order to be uploaded to the web portal, even if he had in the meantime received the physical copy of the order.**

It is directed that if the appeals filed by the petitioner are within time, counting the period of limitation from 12.12.2019, the appeals shall be heard and decided on merits - petition disposed off.

Failure to upload the order copy on GSTN portal alone cannot prevent the time-barred appeal

[In favour of revenue]

Britannia Industries Ltd. *v.* Union of India [2023] 153 taxmann.com 255 (Gujarat) HIGH COURT OF GUJARAT

GST : Limitation period to file appeal under section 107 would start from date of service of order-in-original manually even if order is not uploaded online as rule 108 nowhere prescribes that an appeal is to be filed only after order-in-original is uploaded on GSTN Portal

Appeals to Appellate Authority - Limitation period - Computation of - Serving of Manual Order - Petitioner's application for refund of accumulated ITC was rejected and Order-in-original dated 23-8-2019 was served manually - A new application was filed for said refund but it was also rejected vide order dated 3-12-2020 on ground that once order dated 23-8-2019 rejecting same claim was passed and no appeal was filed, same having attained finality, claim was not maintainable - Appeal against order dated 3-12-2020 was also rejected on ground that there was no powers to review an earlier order - Against order dated 23-8-2019, petitioner could not file appeal electronically, due to Non-receipt of an electronic copy of said order, which is only mode of filing such appeal - HELD : Section169 indicates that any decision or order shall be served by giving or tendering it directly or by a messenger including a courier to address of taxable person - Petitioner had admitted that order dated 23-8-2019 was served manually - Rule 108 no doubt prescribes that appeal has to be filed electronically, but it nowhere prescribes that same is to be filed only after impugned order is uploaded on GSTN Portal - Merely because orders were subsequently uploaded would not render or save appeals from being time barred - Therefore, limitation period to file appeal under section 107 would start from date of service of manual order, even if order is not uploaded online - Petitioner's contention that they were handicapped in filing appeal, as appeal could only be filed through electronic mode while Orders-In-Original was not uploaded, was not acceptable - Petitioners had filed appeals only after orders of recovery had been passed and they were aware as recovery order was manually served with adjudication orders - **Merely because orders were subsequently uploaded would not render or save their appeals from same having been time barred especially when recovery proceedings had already been done and orders to debit freeze accounts had been made in exercise of powers under section 79 of CGST Act** [Section107, read with section169 of CGST Act,2017 - Section37C of Central Excise Act, 1944 - Rule 108 of CGST Rules, 2017/ Gujarat Goods and Services Tax Rules, 2017] [Paras 15 and 16]

SERVICE OF NOTICE ON WRONG EMAIL ID

Order is liable to be set aside if notices were sent to different e-mail id and not on assessee's registered e-mail id: HC

[In favour of Taxpayer]

Raghava- HES- Navayuga (JV). *v*. Additional Commissioner of Central Tax[2024] 160 taxmann.com 21 (Telangana)

HIGH COURT OF TELANGANA

GST : Limitation period to file appeal under section 107 would start from date of service of order-in-original manually even if order is not uploaded online as rule 108 nowhere prescribes that an appeal is to be filed only after order-in-original is uploaded on GSTN Portal

Determination of tax - Opportunity of hearing - Assessee in instant case impugned an order which referred to intimations of personal hearing sent to assessee on three different dates for personal hearing - However, said notices were not served upon assessee because intimations were sent at a different email-id which was not registered email-id of assessee - Therefore, assessee could not be served with those intimations which prevented him from availing opportunity of personal hearing awarded by department - Department did not dispute fact that assessee had much in advance brought to notice of department so far as his registered email address was concerned - HELD : Because of technicalities, notices of personal hearing had not been served upon assessee and he had not been provided with a fair opportunity of personal hearing - Impugned order being violative of principles of natural justice was to be set aside [Section 73 of Central Goods And Services Tax Act, 2017/Telangana Goods And Services Tax Act, 2017] [Paras 6 & 7]

MANUAL FILLING JUSTIFIED

[In favour of Taxpayer]

JOSE JOSEPH, VERSUS ASSISTANT COMMISSIONER OF CENTRAL TAX AND CENTRAL EXCISE, ALAPPUZHA, ADDITIONAL COMMISSIONER (APPEALS) , KOCHI, THE UNION OF INDIA- 2022 (1) TMI 50 - KERALA HIGH COURT {Other Citation: 2022 (62) G. S. T. L. 464 (Ker.)}

GST : Right to appeal - Order was not uploaded on the portal - Refund of unutilized input tax credit - grievance of the writ petitioner arises from the allegation that Ext.P1 order was never uploaded in the web portal of the respondents and hence, the petitioner could not file appeals in the electronic form - Principles of natural justice HELD THAT:- It is the admitted case of both the petitioner and the respondents that the orders impugned in the appeals, though dated 29.03.2019, were never uploaded in the web portal to enable the petitioner to prefer the electronic filing of appeals, as prescribed. There is no quarrel that the Commissioner has not issued any notification specifying any other form of appeal. However, on the basis of receipt of a copy of the order on 10.04.2019, the petitioner preferred appeals manually only on 09.01.2020, with a delay of 184 days - Thus, after referring to the decision in DEBABRATA MISHRA VERSUS THE COMMISSIONER OF CT AND GST, ADDL. COMMISSIONER, CT AND GST, CT AND GST OFFICER [2020 (3) TMI 1204 - ORISSA HIGH COURT] and ASSISTANT COMMISSIONER (CT) LTU, KAKINADA & ORS. VERSUS M/S. GLAXO SMITH KLINE CONSUMER HEALTH CARE LIMITED [2020 (5) TMI 149 - SUPREME COURT] the Appellate Authority dismissed the appeals as time-barred.

When admittedly there was a failure on the part of the respondents to upload the order in the original, petitioner cannot be mulcted with the responsibility of preferring appeals within the time period stipulated. The time period stipulated in the statute for filing an appeal is part of the same transaction that exists with the uploading of an order in the original - When the mode of appeal prescribed by Rules is only the electronic mode, the time limit of three months can start only when the assessee had the opportunity to file the appeal in the electronic mode. The assessee cannot be blamed if he waited for the order to be uploaded to the web portal, even if he had in the meantime received the physical copy of the order.

The petitioner is entitled to have his appeals that were filed manually, to be treated as having been filed within time - Petition allowed.

NON-Speaking Refund Rejection order

CITATION	PARTICULARS
Bhumika Highstreet (P.) Ltd. *v.* Assistant Commissioner GST, Division-VI, 157taxmann.com 476 Bombay (2023	Impugned order was passed without considering reply of petitioner and documents which were placed on record of revenue - Impugned order was to be withdrawn by revenue authority and accordingly set aside - Revenue was directed to issue fresh show cause notice to assessee and to hear assessee on all materials/documents before passing reasoned order
Tvl. Naggaraj Anooradha, 137 taxmann.com 386 (Madras) [2022])	Where Competent Authority rejected assessee's claim for refund without adducing reasons, an order held to be passed on refund after hearing assessee.
Jay Jay Mills (India) (P.) Ltd. *v.* State Tax Officer, Special Circle-II, Tirupur, 123 taxmann.com 115 (Madras) (2021)	Where assessee's claim of refund of input tax credit was rejected by respondent Tax Officer without adducing any reasons by non-speaking order, said order was to be set aside and matter was to be remanded to respondent officer

CITATION	PARTICULARS
Chennai Silks *v.* Assistant Commissioner (ST) (FAC), 157 taxmann.com 65 (Madras) (2023)	Once assessee filed reply/objections pursuant to show cause notice, it was bounden duty of revenue to pass a speaking order, providing reasons for rejection of the reply/objections raised by assessee - In instant case revenue admittedly, failed to consider reply/objections made by petitioner pursuant to show cause notice and passed a non-speaking order - Therefore, failure on part of revenue to address reply/objections of assessee by a speaking order, would vitiate impugned proceedings.**[Paras 12 and 13],**
Vainguinim Valley Resort Unit of Britto Amusements Pvt Ltd Vs Union of India (Bombay High Court)Writ Petition No. 324 of 2021 dated 13.12.2022])	There is no reference to the contents of the reply filed by the Petitioner to the show-cause notice. It therefore clearly revealed that there is non-application of mind while passing the impugned order. Similarly, it is clear from the reasoning in the impugned order that Respondent No.2 failed to take into account reply and the document produced by the Petitioner to the show-cause notice, which now compelled us to quash and set aside the impugned order and to remand the matter for fresh consideration by taking into account the reply and the documents to the show-cause notice as well as the orders passed by the Appellate Tribunal with regard to the earlier show cause notices

CROSS EMPOWERMENT

- **Show cause notice**

Authority empowered to issue show cause notice

✓ 'Proper officer'

✓ S. 2(91)

✓ Circular No. 3/3/2017 –GST dt. 05-07-2017

Section – 2(91) , Central Goods And Services Tax Act, 2017

"proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

Section - 6, Central Goods And Services Tax Act, 2017

6. (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification[33], specify.

(2) Subject to the conditions specified in the notification issued under sub-section (1),—

(a) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(b) **where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.**

CIRCULAR NO.3/3/2017-GST

GST PROPER OFFICER RELATING TO PROVISIONS OTHER THAN REGISTRATION AND COMPOSITION UNDER THE CENTRAL GOODS AND SERVICES TAX ACT, 2017

CIRCULAR NO.3/3/2017-GST, DATED 5-7-2017

AS AMENDED BY CIRCULAR NO.31/05/2018-GST, DATED 9-2-2018

In exercise of the powers conferred by clause (91) of section 2 of the Central Goods and Services Tax Act, 2017 (12 of 2017) read with Section 20 of the Integrated Goods and Services Tax Act (13 of 2017) and subject to sub-section (2) of section 5 of the Central Goods and Services Tax Act, 2017, the Board, hereby assigns the officers mentioned in Column (2) of the Table below, the functions as the proper officers in relation to the various sections of the Central Goods and Services Tax Act, 2017 or the rules made thereunder given in the corresponding entry in Column (3) of the said Table:—

TABLE

S. No.	*Designation of the officer*	*Functions under Section of the Central Goods and Services Tax Act, 2017 or the rules made thereunder*
(1)	(2)	(3)
1.	Principal Commissioner/ Commissioner of Central Tax	*i.* Sub-section (7) of Section 67 *ii.* Proviso to Section 78
2.	Additional or Joint Commissioner of Central Tax	*i.* Sub-sections (1), (2), (5) and (9) of Section 67 *ii.* Sub-section (1) and (2) of Section 71 *iii.* Proviso to section 81 *iv.* Proviso to sub-section (6) of Section 129 *v.* Sub-rules (1),(2),(3) and (4) of Rule 139 *vi.* Sub-rule (2) of Rule 140
3.	Deputy or Assistant Commissioner of Central Tax	*i.* Sub-sections (5), (6), (7) and (10) of Section 54 *ii.* Sub-sections (1), (2) and (3) of Section 60 *iii.* Section 63 *iv.* Sub-section (1) of Section 64 *v.* Sub-section (6) of Section 65

		xxxv. Rule 152 *xxxvi.* Rule 153 *xxxvii.* Rule 155 *xxxviii.* Rule 156
4.	Superintendent of Central Tax	*i.* Sub-section (6) of Section 35 *ii.* Sub-sections (1) and (3) of Section 61 *iii.* Sub-section (1) of Section 62 *iv.* Sub-section (7) of Section 65 *v.* Sub-section (6) of Section 66 *vi.* Sub-section (11) of Section 67 *vii.* Sub-section (1) of Section 70 *viii.* Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 73 [2][*(viii)(a).* *Sub-sections (1), (2), (3), (5), (6), (7), (9) and (10) of Section 74*] *ix.* Sub-rule (6) of Rule 56 *x.* Sub-rules (1), (2) and (3) of Rule 99 *xi.* Sub-rule (1) of Rule 132 *xii.* Sub-rule (1), (2), (3) and (7) of Rule 142
	Inspector of Central Tax	*i.* Sub-section (3) of Section 68 *ii.* Sub-rule (17) of Rule 56 *iii.* Sub-rule (5) of Rule 58

Parallel proceedings cannot be initiated by State GST authorities on the same subject matter

Raj Metal Industries & Anr. v. UOI & Ors. [W. P. A. 1629 of 2021,

Facts

Raj Metal Industries (**"the Petitioner"**) has filed this petition challenging the actions initiated by the State GST Authorities (**"the Respondent"**) with respect to summons issued dated October 19, 2020 under Section 70 of the WBGST Act

Challenging blocking of the electronic credit ledger on December 8, 2020 being challenged the vires of Rule 86A of the West Bengal Goods and Services Tax Rules, 2017 ("the WBGST Rules")/ Central Goods and Services Tax Rules, 2017 ("the CGST Rules") & Section 16(2)(c) of the WBGST Act/ CGST Act

Further, the proceedings were already pending against the Petitioner on the same subject matter under the CGST Act.

Issues

Whether the summon issued and proceedings initiated by the Respondent is in violation of the Section 6(2)(b) of the WBGST Act?

Held

The Hon'ble Calcutta High Court in ***W. P. A. 1629 of 2021, dated March 24, 2021*** stayed the summons and proceedings thereunder and held that the summons issued by the Respondent is, prima facie, in violation of Section 6(2)(b) of the WBGST Act.

SECTION 61 Scrutiny of returns .[20]

[21] **61.** (1) The proper officer **may scrutinize the return** and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed**, if any, in such manner as may be prescribed and seek his explanation thereto.**

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under section 65 or section 66 or section 67, or proceed to determine the tax and other dues under section 73 or section 74.

RULE 99.

(1) **Where any return furnished by a registered person is selected for scrutiny,** the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, **he shall issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding thirty days from the date of service of the notice** or such further period as may be permitted by him and also, where possible, quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

(2) The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.

(3) Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in FORM GST ASMT-12.

Circular No.169/01/2022-GST dated the 12th March, 2022

7.1 In respect of show cause notices issued by officers of DGGI, there **may be cases** where the principal place of business of **noticees fall under** the jurisdiction of **multiple** Central **Tax Commissionerates or where multiple show cause notices are issued on the same issue to different noticees**, including the persons having the same PAN but different GSTINs, having principal place of business falling under jurisdiction of multiple Central Tax Commissionerates.

For the purpose of adjudication of such show cause notices, Additional/Joint Commissioners of Central Tax of specified Commissionerates have been empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Such show cause notices may be adjudicated, irrespective of the amount involved in the show cause notice(s), by one of the Additional/Joint Commissioners of Central Tax empowered with All India jurisdiction vide Notification No. 02/2022-Central Tax dated 11th March, 2022. Principal Commissioners/ Commissioners of the Central Tax Commissionerates specified in the said notification will allocate charge of Adjudication (DGGI cases) to one of the Additional Commissioners/ Joint Commissioners posted in their Commissionerates. **Where the location of principal place of business of the noticee, having the highest amount of demand of tax in the said show cause notice(s), falls under the jurisdiction of a Central Tax Zone mentioned in column 2 of the table below, the show cause notice(s) may be adjudicated by the Additional Commissioner/ Joint Commissioner of Central Tax,** holding the charge of Adjudication (DGGI cases), of the Central Tax Commissionerate mentioned in column 3 of the said table corresponding to the said Central Tax Zone. Such show cause notice(s) may, accordingly, be made answerable by the officers of DGGI to the concerned Additional/ Joint Commissioners of Central Tax

7.2 In respect of a **show cause notice issued by the Central Tax officers** of Audit Commissionerate, where the principal place of business of noticees fall under the jurisdiction of multiple Central Tax Commissionerates, a **proposal for appointment of common adjudicating authority may be sent to the Board**.

[In favour of revenue]

Aasanvish Technology (P.) Ltd.
v.
Director General of GST Intelligence
[2024] 158 taxmann.com 50 (Delhi)
HIGH COURT OF DELHI

Where multiple SCN's were issued in connected matters and highest demand was raised under a notice issued to company registered in jurisdiction of a particular Commissionerate, jurisdiction to adjudicate all such SCNs vested with said Commissionerate, even if principal place of business of another noticee fell under different Commissionerate

Highest demand raised under notice - SCN was issued by Revenue Authority to assessee questioning his alleged online gaming service However, assessee did not hand any wherewithal to provide any such services - **Assessee challenged** SCN, arguing that Additional / Joint Commissioner of Central Tax, Thane **lacked jurisdiction** to adjudicate matter - Assessee contended that his principal place of business is in Hyderabad, Telangana, not Thane - HELD : Circular dated 12-03-2022 applies even though assessee's principal place of business is located in Hyderabad - **Multiple show cause notices were issued in connected matters - Highest demand was raised under notice issued** to Belz Tech Private Limited, registered **in Thane** - Assessee's contention that Additional / Joint Commissioner of Central Tax, Thane would have no jurisdiction was unmerited [Section 73 of Central Goods and Services Tax Act, 2017/Delhi Goods and Services Tax Act, 2017] [Para 12]

Taxpayers Assigned To Either CGST Or SGST Authorities Can't Be Adjudicated By Counterparts:Cross Empowerment

[2024] 162 taxmann.com 240 (Madras)

HIGH COURT OF MADRAS

Ram Agencies

v.

Assistant Commissioner of Central Tax*

C. SARAVANAN, J.

W.P. (MD) NO. 8674 OF 2024

W.M.P. (MD) NOS. 7920 & 7921 OF 2024

APRIL 10, 2024

The petitioner **was assessed to the State Tax Authorities pursuant to the allocation made by the Central Government in terms of Circular No.1/2017-GST (Council), dated 20.09.2017.**The petitioner challenged the Order-in-Original passed by the respondent in respect of the assessment years 2017-2018, 2018-2019 and 2019-2020.

The specific case of the petitioner was that the impugned order had been passed despite the stay being granted by the Principal Seat of the Madras High Court against the operation of notification extending the period of limitation. The **order was further assailed on the ground that the petitioner was assessed to the State Tax Authorities and therefore, the impugned order passed by the Central Tax Authorities was also contrary to the law settled by the Court**.

The Madras High Court held that the issue regarding cross-empowerment and the jurisdiction of the counterparts to initiate proceedings when an assessee has been allocated either to Central Tax Authorities or to the **State Tax Authorities was examined in detail in case of Tvl. Vardhan Infrastructure [2024] 160 taxmann.com 771 (Madras).** After examining the provisions, the Court concluded that in the absence of notification issued for cross-empowerment, **the authorities from the counterpart Department cannot initiate proceedings where an assessee is assigned to the counterpart. Therefore, the impugned Order-in-Original was to be set aside.**

[2024] 160 taxmann.com 49 (Gauhati)

HIGH COURT OF GAUHATI

Rajesh Mittal

v.

Union of India

MANISH CHOUDHURY, J.

WP(C) NO. 371 OF 2024

JANUARY 25, 2024

- Assessee received show cause notice stating that he had wrongly availed Input Tax Credit by **SGST Authority**

- Despite ongoing proceedings initiated by SGST authorities, assessee **received another Show Cause Notice CSGT authorities for same violation**

Assessee contended that issuing second Show Cause Notice on same subject matter by CGST authorities while proceedings initiated by SGST authorities were ongoing violated **Section 6(2)(b) of CGST/SGST Act**

JUDEMENT

CGST authorities were directed *not to proceed with second notice till next hearing, considering pendency of first notice* and statutory provisions [Section 6(2)(b) of Central Goods and Services Tax Act, 2017/Assam Goods and Services Tax Act, 2017]

Ideal Unique Realtors (P.) Ltd.

v.

Union of India*

[2022] 145 taxmann.com 484 (Calcutta)

HIGH COURT OF CALCUTTA

Where multiple proceedings were initiated by different wings of same department but none of proceedings were concluded properly, spot memos issued by Audit Officer were to be quashed

From 2018, for very same issue of TRAN-1, assessee was repeatedly summoned, notices were issued and proceedings were commenced by three different wings of same department - On issue, assessee was issued summons on 14-1-2020 by another wing of same department - Assessee appeared in response to summons and stated to have submitted requisite documents - Inspite of same, two spot memos were issued by respondent No. 7-Audit Officer - Assessee challenged Audit Officer's jurisdiction to issue spot memos - HELD - Different wings of same department had been issuing notices and summons to assessee - None of proceedings initiated by department had been taken to logical end - Spot memos in question were to be quashed - Department was to be directed to logically end proceedings after affording opportunity of personal hearing to assessee [Section 140 of Central Goods and Services Tax Act, 2017/West Bengal Goods and Services Tax Act, 2017] [Paras 2, 3, 9 and 10] [In favour of assessee]

Nestle India Ltd.

v.

Union of India

[2024] 158 taxmann.com 21 (Rajasthan)

HIGH COURT OF RAJASTHAN

Where a notice had already been issued by Superintendent based on an audit report and subsequently another notice was issued by Additional Commissioner, on writ petition filed by assessee, notice was to be issued to revenue and proceedings relating to notice issued by Additional Commissioner was to be stayed

Audit - Show Cause Notice - Jurisdiction of Additional Commissioner - Based on an audit report show-cause notice had already been issued by Superintendent - **Another show cause notice was issued by by Additional Commissioner,** CGST - Additional Commissioner, CGST passed an order relating to jurisdiction and came to conclusion that he had jurisdiction to issue said subsequent show-cause notice - Petitioner/assessee submitted that determination made was contrary to language of section 65 (7) inasmuch only one notice could be issued based on said audit report as per monetary limit - Held : Notice was to be issued and proceedings pursuant to show cause notice issued by Additional Commissioenr was to be stayed [Section 65 of Central Goods and Services Tax Act, 2017/Rajasthan Goods and Services Tax Act, 2017] [Paras 8 and 10] [In favour of assessee]

[2024] 159 taxmann.com 577 (Bombay)

HIGH COURT OF **BOMBAY Fomento Resorts & Hotels Ltd. *v.* Union of India**

Proper officer - Power to issue audit report or show cause notice - Petitioner-assessee challenges validity of Circular No.3/3/2017-GST dated 05.07.2017, Circular No.31/05/2018-GST and Circular No.169/01/2022-GST on ground that CBIC had no power to issue same and based thereon to confer any power of assignment of functions of 'proper officer' upon Central Tax Officers for issuing an audit report under section 65(6) or show cause notice under section 73 or 74 - Assessee also challenged action of Audit Authority issuing of audit report and consequent three show cause notices - HELD : Section 3 of CGST Act, empowers Government, by notification, to appoint certain classes of officers for purposes of CGST Act - Accordingly, in exercise of powers conferred by Section 3 r/w Section 5 of CGST Act and Section 3 of IGST Act, Central Government, vide notification, has already appointed certain central tax officers and central tax officers subordinate to them for purposes of CGST Act and vested in them all powers under GST Act - Thus, in instant case, by impugned circular Circular No.3/3/2017-GST, CBIC had inter alia assigned Deputy or Assistant Commissioner of Central Tax to function as a "proper officer" in relation to CGST Act and this includes clause (v) of Section 65(6) concerning communication of audit report on conclusion of audit - Consequently, respondent no 4 was "proper officer" to communicate audit report under Section 65(6) of CGST Act - Similarly, other two impugned circulars have assigned functions under Section 74 to subordinate officers of central tax by specifying monetary limit and impugned circulars very clearly assign powers to issue notices under Sections 73 and 74 of CGST Act - Therefore no case was made out to strike down impugned circulars or impugned show cause notices on aforesaid ground [Section 2(91), read with sections 65 and section 73 of Central Goods And Services Tax Act, 2017/][Paras 53 to 62][In favour of revenue]

Parallel proceedings cannot be initiated by State GST authorities on the same subject matter

Certain relevant judgement on stated issue

the Hon'ble Punjab & Haryana High Court in ***Kaushal Kumar Mishra v. Additional Director General & Anr. [CWP-21387-2020 (O&M), decided on February 12, 2021]*** dismissed the petition and refused to interfere with the investigations undertaken by the competent authorities against the proprietor, for alleged misuse and fake availment of Input Tax Credit (**"ITC**. Further, the Court held that where different officers appointed are independently investigating altogether different matters involving contraventions of prima facie cognizable and punitive offences under CGST Act, without any overlapping, such investigation is not barred by Section 6(2)(b) of the CGST Act.

the Hon'ble Allahabad High Court in ***G.K. Trading Company v. Union of India & Ors. [Writ Tax No. 666 of 2020, dated 2.12.2020]*** dismissed the petition filed for prohibiting another proper officer to initiate any inquiry/proceeding on the same subject-matter. The Court observed and held that, there was no proceeding initiated by a proper officer against the assessee on the same subject-matter referable to Section 6(2)(b) of the CGST Act as it was merely an inquiry by a proper officer under Section 70 of the CGST Act.

Koenig Solutions Pvt. Ltd. Vs. UOI – 2021-TIOL-1013-HC-DEL-GST
Himanshu Balram Gupta vs. UOI – 2020-TIOL-2241-HC-AHM-GST.

HEARINGS

AVSHESH KUMAR VS UNION OF INDIA [2024] 162 TAXMANN.COM 858 (ALLAHABAD)

ISSUE INVOLVED:

Challenge Adjudication Order imposting Tax and Penalties on ground that THREE SUCCESSIVE DATES for personal hearing WERE FIXED WITHIN ONE WEEK BY SINGLE NOTICE, and no order granting adjournment was passed

HELD THAT:

ADJUDICATION ORDER SET ASIDE subject to depositing Rs. 5 lakhs - Revenue directed to treat adjudication order as show cause notice, allow assessee/petitioner to file reply, and grant fresh personal hearing after due notice by following principles of natural justice - Matter to be concluded within 3 months.

Held on Decision Prevailed in the Case of REGENT OVERSEAS PVT. LTD. VS. UNION OF INDIA AND 1 {2017 (3) TMI 557}- GUJARAT HIGH COURT

It was held that fixing three different dates of hearing within a week without passing any order of adjournment on each date and the passing of order on a fourth date without intimating the petitioner is UNDESIRABLE AND DEFEATS THE PURPOSE & INTENT OF SECTION 133A O THE ACT. On that note. The writ petition was disposed of along with directions to treat the order as a Show Cause Notice and provide opportunity to reply and appear in 15 days' time for an expeditious adjudication.

PIONEER CO-OPERATIVE CAR PARKING SERVICING AND CONTRUCTIONS SOCIETY LIMITED VS. SENIOR JOINT COMMISSIONER
[2024] 160 TAXMANN.COM 181 (CALCUTTA)

Notice u/s 61(Scrutiny of Returns)

SCN u/s 73(1)

Seeks Extension of Time to respond to Notice

No Extension, Passed Order u/s 73(10)

HELD THAT:

Once assessee had sought for extension, Adjudicating Authority was obliged to consider application for extension and ought not to have passed final order holding that more than six adjournments had been granted - Adjournments granted in earlier proceeding under section 61 could not be clubbed together for purpose of holding that assessee was afforded with ample opportunity to respond to SCN - Further, since order stood vitiated on ground of violation of principles of natural justice, alternative remedy in form of an appeal was no bar for exercise of extraordinary writ jurisdiction.

MULTIPLE SCNS ISSUE

SECTION 73/74

As per section 73/74 of the CGST Act'2017, where any GST has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason,, the Proper (GST) Officer may serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder. Section 73 is for normal genuine cases of mistake whereas cases of fraud etc are covered in Section 74.

> **There is no restriction in the above said provisions regarding the number of short show-cause notices which can be issued.** The object behind issuing show levied or short paid. **If after issuing one show-cause notice,** the cause notice is to recover tax not levied or short levied the assessee, **it can issue another show-cause notice for recovery of the department comes across further incriminating facts and material against tax not/short paid.**

There is restriction of the time period for issuing show-cause notice which is 3 months prior to three years in normal case and 6 months prior to five years in cases involving fraud, or any wilful-misstatement or suppression of facts to evade tax. **But there is no restriction on the number of show cause notices that can be issued by the department.**

JURISPRUDENCE IN THIS REGARD

In **Garibdasji Distributors vs Commissioner of Central Excise, Coimbatore, (2008) 11STR 145 (CESTAT-Chennai) / 2008 TaxPub(ST) 0426 (CESTAT-Chen)**, **by a second show-cause notice, department raised a demand** of differential tax by adding to taxable value certain amount of expenses reimbursed to assessee by their principal (manufacturer). Assessees contended that it was not open to the department to reopen assessment already approved by way of issue of show-cause notice.
The Tribunal held that assessees had filed service tax returns, albeit belatedly, but those returns had returned only the amounts received as commission from principal. The reimbursed expenses were not returned. The department was, therefore, very much within their right to demand tax which escaped assessment and this was precisely what they did by issue of show-cause notice.

In the case of **India Tourism Development Corportion Ltd vs Delhi Administration (2017) 52 STR 229 (HC – Del.) / 2017 TaxPub(ST) 1065 (Del-HC),** Delhi High Court has **held that quasi- judicial authority cannot review its earlier decision unless power of review is conferred by statute**. The Collector of Central Excise while adjudicating upon the first show cause notice was clearly performing quasi-judicial function Second SCN after gap of five years cannot be issued once first SCN is adjudicated, became final and accepted by both parties.

In the case **CCE vs Prince Gutka Ltd. (2017) 52 STR 83 (SC) / 2017 TaxPub(ST) 1023 (SC) ,** CESTAT has held that there could not have been second show cause notice on the same cause of action on which adjudicating authority had dropped the earlier demand . **Supreme court has held that issue of second SCN on same cause of action is not permissible** and that there was no error on Tribunal 's order setting aside demand under second SCN.

Varun Beverages Limited
Vs
Commissioner of Central Excise & Service Tax (CESTAT Delhi)

CESTAT upheld validity of Issue of two SCNs for the same Period

Department on piecemeal basis for the same period and for this submission reliance was placed on the Simplex Infrastructures Ltd., in which Calcutta High Court held as follows : "there cannot be a double assessment for the period 10 September 2004 to 31 September 2005 as the Department has sought to do. The periods pertaining to which the show cause notice dated 21 April 2006 and the show cause notice dated 7 September 2009 were issued overlap to an appreciable extent". It has also been submitted that this is not permissible in law as held by the Calcutta High Court in Avery India Ltd. Vs. Union of India11. Learned Counsel also relied upon in Duncans Industries Ltd. Vs. Commissioner of Central Excise, New Delhi12, Paro Food Products and Shreeji Colourchem Industries.
We find all these case laws dealt with cases in which the assessment of duty/service tax was proposed for the same period and differential duty/service tax was demanded on different grounds in different show cause notices. The present case is different.

We do not find any illegality in the Revenue issuing two show cause notices; one for recovery of irregular availed Cenvat credit (which is subject matter of the present appeal) and another show cause notice for recovery of duty short paid. It does not amount to two assessments for the same period in this case.

Simplex Infrastructures Ltd.
Versus
Commissioner of Service Tax, Kolkata-2016 (4) TMI 548 – CALCUTTA HIGH COURT while following the ratio in Avery India Ltd.-vs.-Union of India (2011) (268 ELT 64) read with Hon'ble Supreme Court in the case of Dankan Industries Ltd.-vs.-Commissioner of Central Excise, New Delhi (2006) (201 ELT 517) held that

Two show cause notices could not have been issued in relation to the same period. The impugned show cause notice, therefore, cannot be sustained.

It further held that

it is trite law that an authority cannot confer on itself jurisdiction to do a particular thing by wrongly assuming the existence of a certain set of facts, existence whereof is a sine qua non for exercise of jurisdiction by such authority. An authority cannot assume jurisdiction to do a particular thing by erroneously deciding a point of fact or law. Here, **since the petitioner has challenged the jurisdiction of the authority to issue the impugned show cause notice, the Writ Petition cannot be rejected at the threshold**. Whether or not the petitioner will ultimately succeed on merits is a different question altogether. However, it cannot be said that the Writ Petition is not maintainable at all and should not be entertained for adjudication.

Bridging The Gap Between ST-3 Returns And ITR/Form 26 AS

[2024] 159 taxmann.com 336 (Mumbai - CESTAT)
CESTAT, MUMBAI BENCH
Umesh Tilak Yadav
v.
Commissioner of Central Excise*
DR. SUVENDU KUMAR PATI, JUDICIAL MEMBER
AND ANIL G. SHAKKARWAR, TECHNICAL MEMBER
FINAL ORDER NO. 87105 OF 2023
SERVICE TAX APPEAL NO. 85246 OF 2023
NOVEMBER 8, 2023

Demand of service tax merely on difference between figures of ST Return and IT return was **not sustainable without establishing that consideration was received for activity covered under definition of services under Finance Act, 1994**

FACTS

- Difference between figures of Service Tax Return and Income-tax return - For demanding any amount of service tax under Section 73 of Finance Act, 1994, first requirement for Revenue was to establish that a particular amount of service tax was either not paid or short paid or not levied or short levied

- It was also essential to establish that value on which such service tax was calculated was in terms of section 67 of Act ibid. and that it represented consideration for activity which satisfied definition of service under section 65B(44) of Act ibid.

Demand of service tax had been made merely on basis of aforesaid difference, prima facie examination of fact that appellant had received consideration by providing service, was missing - In view of aforesaid, **impugned demand order was to be quashed [Section 73 of Finance Act, 1994]**

[2022] 136 taxmann.com 109 (Kolkata - CESTAT)

CESTAT, KOLKATA BENCH

Luit Developers (P.) Ltd.

v.

Commissioner of Central Goods and Services Tax & Central Excise, Dibrugarh

Service tax cannot be demanded for mismatch of income reflected in Form 26AS and ST-3 Returns because service recipients deducted TDS on rent/commission along with Service Tax component; Figures reflected in Form 26AS and figures shown to **Income Tax authorities cannot be used to determine Service Tax liability unless there is an evidence shown that it is taxable**

- Inflated figure in **Form 26AS is because some service recipients deducted TDS on rent/commission along with service tax component**
- Part of service tax being demanded under reverse charge mechanisms cannot be sustained since service tax was already collected by service providers as seen from invoices and Reconciliation Certificate and for some service providers tax is on forward charge basis
- **Figures reflected in Form 26AS and figures shown to Income Tax authorities cannot be used to determine Service Tax liability unless there is an evidence shown that it is taxable**

Demand of Service tax, interest and penalty not sustainable - Appeal allowed - Sections 73, 75 and 76 of Finance Act, 1994 [Para 10, 11]

[2020] 118 taxmann.com 164 (Allahabad - CESTAT)

CESTAT, ALLAHABAD BENCH

Kush Constructions

v.

Central Goods and Services Tax, NACIN*

FEBRUARY 20, 2019

Demand of tax could not be raised from assessee on basis of difference between figures of ST-3 return and Form 26AS filed under Income-tax Act, 1961, without examining reasons for said difference and without establishing that entire differential amount was on account of consideration for providing services

FACTS

- Revenue authority compared figures reflected in ST-3 return and those reflected in Form 26AS filed in respect of assessee as required under provisions of Income-tax Act, 1961

- On basis of difference in two figures, revenue authority passed impugned order demanding tax along with penalty

HELD:

Revenue authority could not raise demand on basis of difference between figures of ST-3 return and Form 26AS filed under 1961 Act without examining reasons for said difference and without establishing that entire differential amount was on account of consideration for providing services .**Therefore, impugned order was to be set aside**

BALAJI INSULATIONS INDIA PVT. LTD. VS. COMMISSIONER OF GST

2024 (6) TMI 771 – CESTAT MUMBAI

Difference in Services Reflected in Service Tax Return ST-03 and Income Tax Return

In Favour of Taxpayer

- **Determination of Service Tax not levied or not paid u/s 73 of Finance Act, 1994**

The Tribunal noted that u/s 66B of the Finance Act, 1994, service tax is levied at 14% on the value of service, and u/s 67, the value is the consideration in money charged by the service provider. It is crucial to determine the value of taxable service by excluding activities covered by the negative list u/s 66D and those not included in the definition of service u/s 65B(44). Thus, the correct value of taxable service must be determined as the first step to ascertain the amount of service tax not paid or levied.

- **Proper Determination of the Value of Taxable Services**

The Tribunal found that the Revenue's determination of a taxable value based solely on data from income tax returns, without examining the appellant's records, was presumptive. The show cause notice lacked evidence to establish that the said amount was consideration received for providing services. The Tribunal referenced several precedent decisions, including Umesh Tilak Yadav, Modern Road Makers Pvt. Ltd., and SBI Life Insurance Co. Ltd., which held that demands based solely on differences between figures in income tax returns and ST-3 returns, without examining the reasons for such differences, are not sustainable. The Tribunal concluded that the show cause notice was NOT SUSTAINABLE in law.

- **Sustainability of the Impugned Order**

Given that the show cause notice was found unsustainable, the Tribunal set aside the impugned order passed by the Commissioner (Appeals) and allowed the appeal. Consequently, the cross application filed by the Revenue was dismissed.

The adjudicating authority's computation based on income tax TDS data, without proper examination of the appellant's records, was deemed improper. Thus, the appeal was allowed, and the impugned order was set aside with consequential relief.

JAGDISH PRASAD NATHULAL GUPTA VS. COMMISSIONER OF CGST

2024 (6) TMI 770 – CESTAT MUMBAI

In Favour of Taxpayer

Difference in Services Reflected in Service Tax Return ST-03 and Income Tax Return

- **Determination of Service Tax not levied or not paid u/s 73 of Finance Act, 1994**

The Tribunal noted that u/s 66B of the Finance Act, 1994, service tax is levied at 14% on the value of service. Section 67 specifies that the value should be the consideration in money charged by the service provider. The definition of service u/s 65B(44) and the negative list u/s 66D must be considered to determine the taxable value. Thus, the correct value of taxable service must be determined as the first step in arriving at the amount of service tax not paid or levied.

- **Proper Determination of the Value of Taxable Services**

The Tribunal observed that the Revenue concluded that a taxable value was not subjected to service tax based on data from an outside source without examining the appellant's records. No evidence was provided to establish that this amount was consideration received for providing service. The Tribunal referenced several precedent decisions, including Umesh Tilak Yadav (2024) 159 taxmann.com 336, Commissioner vs. Modern Road Makers Pvt. Ltd. (Appeal No. ST/86984/2021), and others, which held that demands based solely on differences between figures in ST-3 returns and income tax returns without examining the reasons for the difference are not sustainable. The Tribunal concluded that the show cause notice lacked a basis for arriving at the taxable value and was thus NOT SUSTAINABLE in law.

- **Sustainability of the Impugned Order**

Since the show cause notice was deemed unsustainable, the Tribunal set aside the impugned order passed by the Commissioner (Appeals) and allowed the appeal. The Tribunal emphasized that the charges in the show cause notice must be based on the assessee's books of account and other admissible evidence, which was missing in this case.

Highlighting the lack of reference to the defense reply in the Commissioner's order and improper computation of the demand based on incomplete TDS data. The appeal should be allowed by setting aside the order passed by the Commissioner (Appeals)

SIGNIFICANCE OF CONSIDERATION of GSTR 9

Ankit Kumar Agarwal Vs Assistant Commissioner of State Tax, M.A.T. 939 of 2024 with IA No. CAN 1 OF 2024 [2024] (Calcutta)

ISSUE INVOLVED: Whether the annual return filed by the appellant in GSTR-9 for the financial year 2017-18 can altogether be ignored .

Held: Ignoring GSTR -9 could prejudice taxpayer's rights when errors are Revenue Neutral and there is no intention to evade tax

BRIEF FACT: The Appellant have filed GSTR-3B return for the period from October 2017 to March 2018, which **does not include both Input and output cess** and they have filed GST-1 for the month of October 2017, which does not include cess but have filed GSTR-1 for November, 2017 to March, 2018 which include cess @ 5% and cess (specified) amount. The appellant stated that during preparation of data for GSTR-9, it was noticed by him they have **inadvertently missed certain output GST liability on account of Compensation cess from GSTR-3B returns for the relevant financial year and has also missed equivalent amount of input tax credit of cess for such supplies.** It is further stated that while filing GST-9, they have corrected the error by showing the excat amount of compensation cess payable by them during the said period as could be seen from table 4A of GSTR-9. **Further, it was stated that Input tax credit is also matching with auto populated figure in GST-2A.** The appellant stated that the **error was unintentional** as GST was a new tax at the relevant time and he is a small assessee and there was no revenue loss to the government as the entire exercise was revenue neutral and also there was no gain to the appellant.

Conclusion: The GSTR-9, which was filed within time if it is not considered, the assessee's right would be greatly prejudiced. Thus, considering the fact of the case this order should not be treated as a precedent and same matter remand back to adjudicating authority.

TVL. FUTURE GENERAL INDIA INSURANCE CO. LTD. VS ASSISTANT COMMISSIONER (STATE TAX)

[2024] 159 TAXMANN.COM 628 (MADRAS)

FACTS OF THE CASE:

- **Taxpayer engaged in the Business of Insurance Products and is operating on a PAN INDIA Basis.**
- **Difference in Turnover arises between the FINANCIAL STATEMENTS and GSTR-9, due to fact that Turnover on PAN India Basis reflected in Financial Statements and Turnover pertaining to state of Taxpayer, i.e., Tamil Nadu reflected in GSTR-9.**
- **A Certificate from a Chartered Accountant also submitted in respect of Turnover from Tamil Nadu.**
- **Also CGST and SGST imposed at a rate of 18% each (instead of 18% in aggregate) on the Turnover of the Taxpayer.**

ISSUE:

- **The Assessing Officer raised concern to the variation in the Turnover of the Taxpayer for the state of Tamil Nadu as per Financial Statements and as per GSTR-9, without application of mind.**

HELD THAT:

Tax Liability has been imposed as Certificate of CA did not provide State Wise Turnover and also the findings of AO is baseless on account of bifurcation of Total and Tamil Nadu Turnover. Further, it also appears that GST had been imposed at 36 per cent instead of applicable rate of 18 per cent. Even with regard to GST at 18 per cent, from return placed on record by assessee, it appeared that tax liability in respect of turnover was duly discharged. Total tax imposed under this head was about Rs. 14.56 crores and patent errors justify interference with assessment order even without examining order in respect of other defects for which liability was imposed - Therefore, IMPUGNED ASSESSMENT ORDER COULD NOT BE SUSTAINED and to be re-adjudicated.

SUPPRESSION OF FACTS

Where the Issue Involved Interpretation of Law, Extended Period Cannot Be Invoked

- In **[2010] 1 taxmann.com 778 (Gujarat) HIGH COURT OF GUJARAT Commissioner of Central Excise & Customs v. Mafatlal Industries Ltd.*** *Section 11A of Central Excise Act, 1944 - Demand of duties not levied or not paid or* **short paid -** *Limitation - extended time limit not invokable as there were ambiguity about applicability of Rules and favourable orders of Tribunal during relevant period - Revenue's appeal dismissed. (Paras 8)*

- In **Atul Kaushik and Ors. Vs. C.C. (Export), New Delhi** reported in **[2017] 43 GSTR 256 (Trib – Delhi)**

  the Hon'ble CESTAT New Delhi observed that – *"It is a well settled rule that when two reasonable constructions can be put upon the penal provision, court must lean towards that construction which exempts subject from penalty rather than one which imposes penalty.* ***When no penalty is held to be imposable when the issue involved is interpretational, it almost axiomatically follows that even extended period cannot be invoked in such cases."***

- In **Shri Shakti LPG Limited Vs. Commr. of C. Ex. and Cus.** cited in **2005 (187) ELT 487 (Tri. – Bang.)** the Hon'ble CESTAT Banglore held that *"Since the issue itself is amenable to dual interpretation, there is not much force in Revenue's contention in invoking the longer period for demand on grounds of suppression of facts in respect of the appellants."*

- In **Brij Motors Pvt. Ltd. Versus Commissioner Of Central Excise, Kanpur** cited in **2012 (25) S.T.R. 489 (Tri. – Del.)** the Hon'ble CESTAT New Delhi held that – *".....****the matter was being interpreted by judicial forums in different ways as may be seen from the decisions quoted by the Appellants. The Higher Courts have been taking the view that in such situations the extended period of time cannot be invoked for raising demand.*** *Even in the case of Bridgestone Financial Services the Tribunal has given the benefit for such reason. So we are of the view that the demand in this case can be sustained only to the extent covered in the normal period of limitation."*

- In **Singh Transporters Vs. Commissioner of Central Excise, Raipur** cited in **2012 [27] S.T.R. 488(Tri. – Del)** it was held by the Hon'ble CESTAT New Delhi that – *"Inasmuch as the issue involved is of legal interpretation of the definition of the various services and being a complicated issue, the assessee cannot be saddled with any suppression or misstatement or mala fide intention so as to invoke longer period of limitation."*

Extended Period Of Limitation Cannot Be Invoked When Income Pertaining To The Issues On Which Tax Has Been Demanded Is Appropriately Reflected In The Financial Statement/Return Which Is A Public Document

The Fact of **NON-PAYMENT AND CREDITOR STANDING IN THE BALANCE SHEET WAS PRIME FACIE AND CANNOT BE HELD TO BE SUPPRESSION OF FACTS**

Judgements in Pre-GST Period:

- *Suppression of facts cannot be alleged when the trading activities in form of Balance Sheet are declared*

The Hon'ble Karnataka High Court in THE COMMISSIONER OF CENTRAL TAX, BANGALORE NORTHCOMMISSIONERATE VERSUS M/S. ABB LIMITED [2022 (6) TMI 1212 - KARNATAKA HIGH COURT]**affirmed the order passed by the CESTAT, Bangalore holding that the assessee is not liable to reverse the CENVAT credit availed, on the grounds of absence of suppression of facts. Held that, balance sheet is conclusive evidence in itself to infer trading activities of an assessee and allegations levelled for suppression of facts are not tenable when the same was already available with the Revenue Department.**

2.8.2) In the matter of **Commissioner Of Service Tax, New Delhi Versus Jitender Lalwani** cited in **2017 (51) S.T.R. 312 (Tri. – Del.)** the Hon'ble CESTAT has held that – "*It is settled principle of law that extended period is not invokable where the issue involves interpretation of various provisions of law and information is already disclosed in statutory documents such as Balance Sheet or Income Tax Returns.*"

- In **Bismee India Enterprises Vs. Commissioner of Central Excise & S.T., Kanpur** cited in **MANU/CN/0126/2018** the Hon'ble CESTAT, Allahabad, held that *"The appellants were reflecting value of the services in their profit and loss account maintained in the ordinary course of business. Such reflection of the activities in the profit and loss account has been held to be a reason for not allowing the revenue to invoke the extended period. Inasmuch as, profit and loss account is a public document and reflection of the entire facts in the said documents cannot lead to the presence of malafide suppression on the part of the assessee."*

- In the matter of **Central India Engineering Co. v. Commissioner of C. Ex., Nagpur** reported in **2016 (44) S.T.R. 657** the Hon'ble CESTAT Mumbai held that *"the appellant recorded the transaction in the books of account, therefore, there is no mala fide intention on their part which shows reasonable cause for non-payment of Service Tax."*

- The Hon'ble Mumbai CESTAT in the matter of **Khandwala Securities Ltd. v. Commissioner of Service tax, Mumbai – I** reported in **2015 (40) S.T.R. 738** held that *"The transactions have been found to be duly recorded in the Books of Account, as found by the Audit party. ..... In this view of the matter, I hold neither extended period of limitation is attracted nor any penalty is imposable under Section 76 or 78."*

- 2.8.6) In the matter of **Valencia Construction Pvt. Ltd. v. Commr. of C. Ex., Cus. & S.T., Nagpur** reported in **2016 (41) S.T.R. 436,** the Hon'ble Mumbai CESTAT held that *"transaction were recorded in their books of account, therefore they had no intention to evade service tax. Moreover, immediately on pointed out by the department, payment of service tax along with interest was admittedly made by the appellant and there is no contest thereon"*

EXTENDED PERIOD OF LIMITATION cannot be invoked where assessee had bonafide belief on exemption and evidence not brought by department on evasion of tax.

Name and Citation	Particulars
[2022] 137 taxmann.com 248 (New Delhi - CESTAT) **CESTAT NEW DELHI BENCH** **Sitaram India Ltd.** ***v.*** **Commissioner CE & CGST, Division-E**	Extended period of limitation is not invokable where there is no suppression of facts, assessee had bona fide belief on exemption and evidence not brought by department on evasion of tax Demand - Limitation - Suppression - Whether extended period of limitation can be invoked where there is no suppression of facts and appellant had bona fide belief on availability of exemption - HELD: **Extended period of limitation cannot be invoked as appellant did not suppress any fact with intent to evade duty and issue involved interpretation of law** **Absence of corroborative evidence to support that there was a deliberate attempt to suppress material facts with an intent to evade payment of tax** -**Extended period of limitation is not invokable as everything was disclosed to the Department at time of scrutiny -** Appellant was of bona fide belief that exemption is available and in such cases extended period of limitation is not invokable - Imposition of penalty does not arise as extended period is not invokable [Para 17] [In favour of Assessee]
[2022] 138 taxmann.com 359 (SC) **SUPREME COURT OF INDIA** **C.C.,C.E. & S.T. Bangalore** **v.** **Northern Operating Systems (P.) Ltd.**	**Extended period of limitation for raising demand was not invokable in absence of any 'wilful suppression' of fact, or deliberate misstatement; assessee would be liable to discharge service tax liability for normal period** Demand - Limitation – Extended period - Assessee had bona fide belief that it was not liable to pay any service tax in relation to seconded employees - However, revenue discharged assessee two show cause notices - HELD : Extended period of limitation was not invokable in absence of any 'wilful suppression' of facts, or deliberate misstatement - Assessee was liable to discharge its service tax liability for normal period [Section 73 of Finance Act, 1994] [Paras 64 and 66] [Partly in favour of assessee]
[2022] 139 taxmann.com 440 (New Delhi - CESTAT) **CESTAT, NEW DELHI BENCH** **Power Finance Corporation Ltd.** **v.** **Commissioner (Appeal), Central Excise & Service Tax, LTU, New Delhi**	**In absence of fraud or Collusion or willful misstatement or suppression of facts, demand invoking extended period of limitation and consequent penalties were to be set aside** Demand - Limitation - Show Cause Notice was issued on 12-4-2016 denying service tax taken by appellant during period 1-4-2011 to 31-12-2015 - : Demand invoking extended period of limitation and consequent imposition of penalties were to be set aside as there was no evidence of fraud or collusion or wilful miss statement or suppression of facts in matter

Name and Citation	Particulars
[2022] 137 taxmann.com 288 (Chandigarh - CESTAT) **CESTAT, CHANDIGARH BENCH** **R D Contractors And Consultants** **v.** **Commissioner of Central Excise & Service Tax, Panchkula**	- Limitation – Extended period - Suppression of facts - Availment of benefit of Notification No. 30/2012-ST and computation of taxable turnover not suppressed by assessee from Department - HELD : **Absence of malafide on assessee's part, extended period of limitation is not invokable** - **Penalty is not imposable [Section 73 of Finance Act, 1994]**
[2017] 88 taxmann.com 234 (SC) **SUPREME COURT OF INDIA** **Commissioner of Central Excise, Indore** **v.** **Raymond Ltd.**	**Where material on basis of which demand had been raised against assessee was before revenue at all material points of time, extended period of limitation provided under proviso to section 11A not available** As the materials on the basis of which the claims/demands have been raised were before the Revenue at all material points of time, No question of suppression or mis-statement can legitimately arise to enable the Revenue to avail the benefit of extended period of limitation.
[2013] 31 taxmann.com 67 (SC) **SUPREME COURT OF INDIA** **Uniworth Textiles Ltd.** **v.** **Commissioner of Central Excise, Raipur**	**For invocation of extended period of limitation, there must be deliberate default on part of assessee and burden of proving same lies on Department and assessee cannot be asked to substantiate his bona fide conduct** Section 73 of the Finance Act, 1994 - Recovery of service tax not levied or paid or short-levied or short-paid or erroneously refunded - Every non-payment/non-levy of tax doesn't attract extended period - There must be some positive action which betrays a negative intention of wilful default - For operation of extended period of limitation, intention to deliberately default is a mandatory prerequisite and inadvertent non-payment doesn't attract extended period of limitation **Burden of proving mala fide on part of assessee lies on shoulders of Department who alleges it and assessee cannot be asked to substantiate his bonafide conduct** Further, extended period of limitation finds application only when specific and explicit armaments challenging bona fides of conduct of assessee are made in show cause notice [Paras 17, 19, 22, 24 and 25] [In favour of assessee]

Name and Citation	Particulars
[2014] 51 taxmann.com 35 (SC) SUPREME COURT OF INDIA Commissioner of Service Tax, Ahmedabad v. Vijay Travels	Where High Court held that : (a) hiring of cabs on per Km. basis is also liable to service tax under rent-a-cab services; but (b) **extended period was not invocable, as assessee held bona fide belief as to non-taxability, Supreme Court admitted cross Special Leave Petitions filed by assessee and revenue**
Simplex Infrastructure Ltd. v. Commissioner Service Tax, Kolkata	**Extended period not applicable-when assessee is diligent in responding to all notices issued by the Department explaining nature and scope of their business with supporting documents** -**There was full and sufficient disclosure of nature of assessee's business** - There was no suppression of material facts to keep Department in dark with deliberate intent to evade payment of Service tax - Section 73 of Finance Act, 1994 not invocable. **It is settled law that the element of 'intent to evade' is inbuilt in the expression 'suppression'** - Reliance in this regard is also placed on 2006 (4) S.T.R. 583 (Tri.-Bang.) in the matter of Elite Detective Pvt. Ltd. v. Commissioner, and Religare Securities Ltd. v. CST, Delhi as reported in 2014 (36) S.T.R. 937 (Tri.-Del.): wherein it was held that the suppression of fact has to be 'with intent to evade'."

SUPPRESSION OF FACTS there must be deliberate suppression of information for the purpose of evading the tax

Name and Citation	Particulars
2003 taxmann.com 2501 (SC)/[2002] 128 STC 647 (SC)[27-02-200... **[2003] 2003 taxmann.com 2501 (SC)** **SUPREME COURT OF INDIA** **Centre for Development of Advanced Computing** **v.** **Commissioner of Central Excise, Pune**	Section 11 of the Central Excise Act, 1944 - Excise duty - Contention of assessee that he was in bona fide belief that the goods emerging during the research and experiments were fully exempt from payment of duty - No reason to conclude that appellant would not have so believed - **No tangible basis for the department to come to conclusion that there was wilful suppression for evasion of duty by the appellant - Provision of section cannot be invoked extending period of limitation of five years.**
Pushpam Pharmaceuticals Co. **v.** **CCE 1995 (78) ELT 401 (SC)**	It is in this context that the Supreme Court observed that since "suppression of facts" had been used in the company of strong words such as fraud, collusion, or wilful default, **suppression of facts must be deliberate and with an intent to escape payment of duty.**
Continental Foundation Jt. Venture Holding v. CCE 2007 taxmann.com 532	The Supreme Court held: **The expression 'suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion"** and, therefore, has to be construed strictly. **Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty**. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."

Name and Citation	Particulars
Bharat Hotels Ltd. (supra)	The Delhi High Court in Bharat Hotels Ltd. (supra) also examined at length the issue relating to the extended period of limitation under the proviso to section 73 (1) of the Act and held as follows; "27. Therefore, it is evident that **failure to pay tax is not a justification for imposition of penalty**. Also, the word "suppression" in the proviso to Section 11A(1) of the Excise Act has to be read in the context of other words in the proviso, i.e. "fraud, collusion, wilful misstatement". As explained in Uni worth (supra), **"misstatement or suppression of facts" does not mean any omission. It must be deliberate**. In other words, there must be deliberate suppression of information for the purpose of evading of payment of duty. It connotes a positive act of the assessee to avoid excise duty.
Cosmic Dye Chemical v. CCE 1995 taxmann.com 926	In the context of section 11A of the Central Excise Act, 1944, which is in identical terms with section 73 of the Finance Act, 1994 was that: **"Now so far as fraud and collusion are concerned, it is evident that the requisite intent, i.e., intent to evade duty is built into these very words.** So far as misstatement or suppression of facts are concerned, they are clearly qualified by the word **"wilful" preceding the words "misstatement or suppression of facts" which means with intent to evade duty.** The next set of words "contravention of any of the provisions of this Act or rules" are again qualified by the immediately following words "with intent to evade payment of duty". It is, therefore, not correct to say that there can be a suppression or misstatement of fact, which is not wilful and yet constitute a permissible ground for the purpose of the proviso to section 11-A. **Misstatement or suppression of fact must be wilful."**
Emaar MGF Land Ltd. V. Commissioner of Central Excise and CGST (CESTAT Delhi)	The Hon'ble CESTAT (**Respondent)**, Delhi observed that the Appeallant did not suppress any facts from the department. **There is no reason or discussion given by Respondent for stating the order "in any case, the notice in this case has willfully contravened the provisions of the Finance Act."** **Also noted that when the demand u/s 73(1) of the Finance Act cannot be confirmed, it is not necessary to examine the other contentions raised by the respondent to quash the order.`**

SUPPRESSION OF FACTS there must be deliberate suppression of information for the purpose of evading the tax

Name and Citation	Particulars
2003 taxmann.com 2501 (SC)/[2002] 128 STC 647 (SC)[27-02-200... **[2003] 2003 taxmann.com 2501 (SC)** **SUPREME COURT OF INDIA** **Centre for Development of Advanced Computing** **v.** **Commissioner of Central Excise, Pune**	Section 11 of the Central Excise Act, 1944 - Excise duty - Contention of assessee that he was in bona fide belief that the goods emerging during the research and experiments were fully exempt from payment of duty - No reason to conclude that appellant would not have so believed - **No tangible basis for the department to come to conclusion that there was wilful suppression for evasion of duty by the appellant - Provision of section cannot be invoked extending period of limitation of five years.**
Pushpam Pharmaceuticals Co. **v.** **CCE 1995 (78) ELT 401 (SC)**	It is in this context that the Supreme Court observed that since "suppression of facts" had been used in the company of strong words such as fraud, collusion, or wilful default, **suppression of facts must be deliberate and with an intent to escape payment of duty.**
Continental Foundation Jt. Venture Holding v. CCE 2007 taxmann.com 532	The Supreme Court held: **The expression 'suppression" has been used in the proviso to Section 11A of the Act accompanied by very strong words as 'fraud' or "collusion"** and, therefore, has to be construed strictly. **Mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment of duty**. Suppression means failure to disclose full information with the intent to evade payment of duty. When the facts are known to both the parties, omission by one party to do what he might have done would not render it suppression. When the Revenue invokes the extended period of limitation under section 11-A the burden is cast upon it to prove suppression of fact. An incorrect statement cannot be equated with a willful misstatement. The latter implies making of an incorrect statement with the knowledge that the statement was not correct."

WHEN THERE EXIST BONA FIDE BELIEF THAT TAX IS NOT APPLICABLE THEN EXTENDED PERIOD CANNOT BE INVOKED

- The Hon'ble High Court in the matter of **Bharat Hotels Limited Vs. Commissioner, Central Excise (Adjudication)** cited in **2018 [12] G.S.T.L. 368** held that *"In the present case, the appellant was under a bona fide belief that it was not liable to pay service tax for the Mandap Keeper Service and Management, Maintenance and Repair Services as discussed earlier. The conduct of the appellant of prompt payment of service tax during the enquiry and after gaining knowledge about its liability to pay service tax, is sufficient reason to believe that the **assessee did not have an intention to evade the payment of service tax. For these reasons, it is held that the revenue cannot invoke the proviso to Section 73(1) of the Finance Act to extend the limitation period for issuing of SCN**."*

- In **India Yamaha Motor Private Limited Vs. The Commissioner of G.S.T. and Central Excise, Chennai Outer Commissionerate** cited in **MANU/CC/0274/2019** the Hon'ble CESTAT Chennai held that – *"The Revenue has not been able to prove an intention on the part of the appellant to evade tax by suppression of material facts. In fact, it is clear that the appellant did not have any such intention and was acting under bona fide beliefs. For these reasons, it is held that the Revenue cannot invoke the proviso to Section 73(1) of the Finance Act to extend the limitation period for issuing of SCN."*

- In **CCE, Raipur v. Satyam Digital Photo Lab** reported in **[2012 (27) S.T.R. 64 (Tri. -Del.)],** the Hon'ble New Delhi CESTAT held that – *"it was held that the notices issued beyond the period of limitation would not stand inasmuch during the relevant period, there was **sufficient material for the assessee to entertain a bona fide belief that the value of raw material used would not form part of the value of services**. By holding so, the matter was sent back for requantifying the demand falling within the period of limitation. The Bench further observed that **on account of bona fide belief, no penalty is required to be imposed**. By applying the ratio of the above decision to the facts of the present case, we hold that the **demand beyond the period of limitation is time-barred and no penalty is required to be imposed.."***

EXTENDED PERIOD OF LIMITATION CANNOT BE INVOKED WITHOUT ANY EVIDENCE BROUGHT ON RECORD

- The Hon'ble Supreme Court in the matter of **Uniworth Textiles Ltd. v. Commissioner of Central Excise, Raipur** cited in **2013 (288) ELT 161 (S.C.)** while setting aside the extended period of limitation held that *"**It is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it.** This Court observed in Union of India v. Ashok Kumar and Ors. MANU/SC/1135/2005 : (2005) 8 SCC760 that "it cannot be overlooked that burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demand proof of a high order of credibility."*

- In the case of **Collector of Central Excise v. H.M.M. Limited** reported in **1995 (76) ELT 497 (SC)**, the Hon'ble Supreme Court concluded that *"The show cause notice did not specifically state as to which of the default enumerated in the proviso to Section 11A was committed by the Assessee. It was held that such a notice was not sufficient as the Assessee must know what case he has to meet. It was held that mere failure to make a declaration would not justify an inference that the intention was to evade payment of duty."*

- The Hon'ble CESTAT New Delhi, in the matter of **Nylon Laminated Belts (P) Ltd. Vs. Collector of Central Excise** cited in **1990 (49) ELT 138 (Tri. – Delhi)** held that *"It is a well settled proposition that the onus to prove suppression lies upon the Department. In this case, the onus has not been discharged. There is also no allegation of evidence of wilful misstatement or suppression of facts or violation of the Act or Rules with intent to evade duty, in the absence of which allegation, the longer period of limitation cannot be applied."*

- In **National Building Construction Corporation Ltd. Vs. C.C.E., Bhopal** cited in MANU/CE/0511/2018, the Hon'ble CESTAT, NEW DELHI held that – *"Proviso to Section 73 of Central Excise Act, 1944 entitles Department to invoke the extended period to the maximum of five years provided there is suppression or misrepresentation of facts on part of the assessee that too with an intention to evade tax, and that it has to be willful/deliberate. The burden of proving the alleged mala fide lies on the alligator i.e. the Department."*

- The Hon'ble Madhya Pradesh High Court in the case of **Godrej Foods Ltd v. Union of India 1993 (68) ELT 28**, categorically held that – *"If there is no material on record placed by the Department to establish that any material facts were suppressed by the petitioners or there was any misrepresentation on their part with the intention to evade duty, the extended period of limitation is clearly inapplicable."*

SUPPRESSION AS DEFINED BY EXPLANATION 2 TO SECTION 74

Explanation 2.to Section 74—*For the purposes of this Act, the expression "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.*

[2024] 160 taxmann.com 153 (Ahmedabad - CESTAT)

CESTAT, AHMEDABAD BENCH

Vimal Stocks (P,) Ltd.

v.

Commissioner of Service Tax*

Demand (Service Tax) - Limitation period - Extended period - Suppression of facts - Issue involved interpretation of definition of 'Banking and other financial services' - Transaction of assessee's alleged activities were recorded in their books of account - HELD : There was no suppression of fact with intent to evade payment of service tax on part of assessee - Therefore, demand of service tax was clearly hit by limitation of time [Section 73 of Finance Act, 1994] [Para 4.7] [In favour of assessee]

Once Tax And Interest Is Paid No Further Action Under Section 74 Of GST Act For The Same Period.

Citation	Particulars
[2024] 160 taxmann.com 190 (Telangana) **HIGH COURT OF TELANGANA** **Rays Power Infra (P.) Ltd.** ***v.*** **Superintendent of Central Tax*** P. SAM KOSHY AND N. TUKARAMJI, JJ. WRIT PETITION NO. 298 OF 2024 FEBRUARY 28, 2024	**Facts of The Case:** During GST audit certain discrepancies were pointed out by audit team and **assessee immediately cleared entire tax liability along with interest which was accepted in final audit report,** initiating proceedings under section 74 thereafter and raising demand was in excess of jurisdiction and same was to be set aside **We are also of the considered opinion that applicability of Section 74 would come into play only if the conditions stipulated in Section 73 has not been met with by the taxpayer** i.e. to say in the event if the conditions stipulated in Section 73(5) is not honored by the taxpayer in spite of the tax liability being brought to his knowledge. Then in the said circumstances, Section 74 would automatically attract and in those circumstances, the contention of the learned Senior Standing Counsel would be acceptable. **Further, keeping in view the provisions of 73(5) & (6), it will go to establish that once having discharged their tax liability also by paying interest on the said tax payable, then no further proceedings could be drawn for the same tax any further**. This view of the Bench stands further fortified from reading of Sub-Section (8) as well which again gives an indication that if necessary compliance in respect of tax as is stipulated under Sub-Sections (1) and (3) is paid along with interest even after issuance of show cause notice, even then the penalty cannot be levied and the notice proceedings shall be deemed to have been concluded.

DIN

- CBIC vide its **Circular No 128/47/2019-GST** has mandated that in all the communications (except in exceptional circumstances) with the assessee (including on e-mails), Documents Identification No is required to be mentioned.
- DIN can be confirmed by the assessee online at **Cbic.gov.in**
- All the communication with the assessee which does **not contain** DIN shall be treated **Invalid** and shall be considered as never been issued.

Circular No. 122/41/2019-GST dated 05/11/2019 of the CBIC. The Board vide the circular has directed that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in para 3 of the circular, **shall be treated as invalid and shall be deemed to have never been issued** The relevant extract of the circular is as follows:

Subject: Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons- reg.

In keeping with the Government's objectives of transparency and accountability in indirect tax administration through widespread use of information technology, the CBIC is implementing a system for electronic (digital) generation of a Document Identification Number (DIN) for all communications sent by its offices to taxpayers and other concerned persons. To begin with, the DIN would be used for search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry. This measure would create a digital directory for maintaining a proper audit trail of such communication. Importantly, it would provide the recipients of such communication a digital facility to ascertain their genuineness. Subsequently, the DIN would be extended to other communications. Also, there is a plan to have the communication itself bearing the DIN generated from the system.

2. The Board in exercise of its power under section 168(1) of the CGST Act, 2017/ Section 37B of the Central Excise Act, 1944 directs that no search authorization, summons, arrest memo, inspection notices and letters issued in the course of any enquiry shall be issued by any officer under the Board to a taxpayer or any other person, on or after the 8th day of November, 2019 without a computer-generated Document Identification Number (DIN) being duly quoted prominently in the body of such communication. The digital platform for generation of DIN is hosted on the Directorate of Data Management (DDM)'s online portal "cbicddm.gov.in"

3. Whereas DIN is a mandatory requirement, in exceptional circumstances communications may be issued without an auto generated DIN. However, this exception is to be made only after recording the reasons in writing in the concerned file. Also, such communication shall expressly state that it has been issued without a DIN. The exigent situations in which a communication may be issued without the electronically generated DIN are as follows:-

(i) when there are technical difficulties in generating the electronic DIN, or
(ii) when communication regarding investigation/enquiry, verification etc. is required to issued at short notice or in urgent situations and the authorized officer is outside the office in the discharge of his official duties.

4. The Board also directs that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in para 3 above, shall be treated as invalid and shall be deemed to have never been issued.

5. Any communication issued without an electronically generated DIN in the exigencies mentioned in para 3 above shall be regularized within 15 working days of its issuance, by:

(i) obtaining the post facto approval of the immediate superior officer as regards the justification of issuing the communication without the electronically generated DIN;
(ii) mandatorily electronically generating the DIN after post facto approval; and
(iii) printing the electronically generated pro-forma bearing the DIN and filing it in the concerned file.

Circular No. 128/47/2019-GST dated 23/12/2019 of the CBIC. (IN CONTINUATION OF CIRCULAR 122)

Circular No.128/47/2019-GST

No. GST/INV/DIN/01/19-20

Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST-Investigation Wing

Room No.01, 10th Floor,
Tower-2, 124, Jeevan Bharti Building,
Connaught Circus, New Delhi- 110001.
Dated the 23rd December, 2019

To:

All Principal Chief Commissioner(s)/ Chief Commissioner(s)/ Principal Director General(s)/ Director General(s)/ All Principal Commissioner(s)/ Commissioner(s) / Principal Additional Director General(s)/ Additional Director General(s)/ Joint Secretaries/Commissioners, CBIC.

Madam/Sir,

Subject: Generation and quoting of Document Identification Number (DIN) on any communication issued by the officers of the Central Board of Indirect Taxes and Customs (CBIC) to tax payers and other concerned persons – reg.

Attention is invited to Board's Circular No. 122/41/2019- GST dated 05th November, 2019 that was issued to implement the decision for Generation and Quoting of Document Identification Number (DIN) on specified documents. This was done with a view to leverage technology for greater accountability and transparency in communications with the trade/ taxpayers/ other concerned persons.

2. Vide the aforementioned Circular, the Board had specified that the DIN monitoring system would be used for incorporating a DIN on search authorisations, summons, arrest memos, inspection notices etc. to begin with. Further, a facility was provided to enable the recipient of these documents/communications to easily verify their genuineness by confirming the DIN on-line at cbic.gov.in. In continuation of the same, the Board has now directed that electronic generation and quoting of Document Identification Number (DIN) shall be done in respect of all communications (including e-mails) sent to tax payers and other concerned persons by any office of the Central Board of Indirect Taxes and Customs (CBIC) across the country. Instructions contained in this Para would come into effect from 24.12.2019.

3. Accordingly, the online digital platform/facility already available on the DDM's online portal "cbicddm.gov.in" for electronic generation of DIN has been suitably enhanced to enable electronic generation of DIN in respect of all forms of communication (including e-mails) sent to tax payers and other concerned persons. On the one hand electronic generation of DIN's would create a digital directory for maintaining a proper audit trail of communications sent to tax payers and other concerned persons and on the other hand, it would provide the recipient of such communication a digital facility to ascertain the genuineness of the communication.

4. In this context, the Board also felt it necessary to harmonize and standardize the formats of search authorisations, summons, arrest memos, inspection notices etc. issued by the GST/Central Excise/Service Tax formations across the country. Accordingly, the Board had constituted a committee of officers to examine and suggest modifications in the formats of these documents. The committee has submitted its recommendations. The standardized documents have since been uploaded by DDM and are ready to be used. When downloaded and printed, these standardized documents would bear a pre-populated DIN thereon. Accordingly, the Board directs that all field formations shall use the standardized authorisation for search, summons, inspection notice, arrest memo and provisional release order (the formats are attached). These formats shall be used by all the formations w.e.f. 01.01.2020.

5. The Board once again directs that any specified communication which does not bear the electronically generated DIN and is not covered by the exceptions mentioned in paragraph 3 of Circular No. 122/41/2019-GST dated 05.11.2019, shall be treated as invalid and shall be deemed to have never been issued.

CITATION	PARTICULARS
[2022] 141 taxmann.com 64 (SC) **SUPREME COURT OF INDIA** **Pradeep Goyal** ***v.*** **Union of India***	**In view of larger public interest and to bring in transparency and accountability in indirect tax administration, Union of India and GST Council were directed to issue advisory/instruction/recommendations regarding implementation of digital generation of DIN for all communications sent by SGST officers to taxpayers; concerned States should consider implementing system of e-generation of DIN** Implementation of system of e-generation - PIL was filed to direct respective States and GST Council to take necessary steps to implement system for electronic (digital) generation of DIN for all communications sent by State Tax Officers (STOs - SGST Officers) to taxpayers and other concerned persons - HELD: **Implementation of system for electronic (digital) generation of DIN for all communications sent by STOs to taxpayers would be in larger public interest and enhance good governance** - Implementation of DIN would bring in transparency and accountability in indirect tax administration which are vital to efficient governance - **GST Council should issue advisories to respective States for implementation of DIN System**, which would be in larger public interest and might bring in transparency and accountability in indirect tax administration - **Union of India and GST Council were directed to issue advisory/instructions/recommendations** to respective States regarding implementation of system of electronic (digital) generation of DIN in indirect tax administration, which was **already being implemented by Karnataka and Kerala** - Concerned States were to be impressed upon to consider implementation of digital generation of DIN [Article 279A of Constitution of India] [Paras 6 and 7] [In favour of assessee]

CITATION	PARTICULARS
CIT (Internatinal Taxation)-1 *v.* Brandix Mauritius Holdings Ltd.* [2023] 149 taxmann.com 238 (Delhi) HIGH COURT OF DELHI Stayed by Apex court considering DIN non applicability is a IRREGULARITY NOT ILLEGALITY	**Where AO passed final assessment order without DIN, since there were no exceptional circumstances as mentioned in Circular No. 19/2019, dated 14-8-2019 which would sustain communication of impugned order manually without DIN, failure to allocate DIN would not be an error which could be corrected by taking recourse to section 292B and, thus, impugned final order could not be sustained** Return of income not to be invalid on certain grounds (Issue of order manually without DIN) - Assessment year 2011-12 - Whether object and purpose of issuance of Circular No. 19/2019, dated 14-8-2019 was to create an audit trail, thus, communication related to assessments, appeals, orders without DIN (document identification number) would have no standing in law - Held, yes - **Whether since in instant case, final assessment order passed by Assessing Officer did not bear any DIN** and there was nothing on record to show that there were exceptional circumstances as mentioned in Circular No. 19/2019 which would sustain communication of final assessment order manually without DIN, failure to allocate DIN would not be an error which could be corrected by taking recourse to section 292B and, thus, impugned final order could not be sustained - Held, yes [Paras 18 and 19] [In favour of assessee]

Taxsutra Breaking News: Noting 'serious' consequences, SC stays HC judgment on DIN less assessments

taxsutra | Direct Tax

Noting 'serious' consequences, SC stays HC judgment on DIN less assessments

SC stays Delhi HC judgment in Brandix on the issue of validity of assessments where DIN is missing; SC, on briefly hearing ASG N. Venkataraman & Sr. Adv. Ajay Vohra for both sides, orally remarks that not mentioning DIN in assessment orders may be an 'irregularity' but that does not make it an 'illegality'; SC further quips " Can assessment go because DIN is not there... to say assessment goes, there will be a vacuum. Can entire assessment be null & void...?" ; SC observes that the consequences of the ITAT order further confirmed by High Court, are 'serious'; SC therefore issues interim stay on both ITAT as well as HC order.

DIN ISSUED BUT NOT MENTIONED IN THE BODY OF ORDER

CRITEO SINGAPORE PTE LTD. VERSUS ACIT, CIRCLE : 1 (2) (1) INTERNATIONAL TAXATION, NEW DELHI. - 2023 (12) TMI 975 - ITAT DELHI

AY - 2019-20

Facts of case

- **In the letter dated 13.09.2023 the DRP stated that directions were up-loaded on system on 7.06.2022 for which a DIN was generated by the system**
- **Whereas no such DIN which was generated on 7.06.2022 was mentioned in the body of the directions**
- **Generation of DIN for the directions of the DRP was separately communicated through letter dated 17.06.2022.**

Whether the subsequent generation of DIN will suffice as the requirement of the CBDT Circular which mandates quoting of DIN in the body of communication/order ?

Held that

- Communication/order passed in violation of the Circular of the CBDT without mentioning the DIN in the body of the order or without taking prior approval from the Chief Commissioner/Director General of Income Tax when there are exceptional circumstances in not quoting the DIN in the body of the order such communication/order was held to be invalid and shall be deemed to have never been issued.
- As the Revenue could not show us any exceptional circumstances for not quoting the DIN number in the DRP order, we hold that the DRP order is invalid and consequently the final assessment order passed by the AO u/s 143(3) r.w.s.144C(13) of the Act pursuant to such invalid directions is deemed to have never been issued and thus bad in law.

DIN VS REFERENCE NUBMBER

REFRENCE NUMBER CAN BE USED INSTEAD OF DIN NO. AS NOTIFIED BY SOME STATE GOVT

GOVERNMENT OF ASSAM
OFFICE OF THE PRINCIPAL COMMISSIONER OF STATE TAX
CUM COMMISSIONER OF TAXES, ASSAM
KAR BHAWAN, DISPUR, GUWAHATI-781006
&&&

INSTRUCTION NO. 08/2023-GST

Dated Dispur the 4th May, 2023

Sub: Facility of generation of Document Reference Number (RFN) and use of the same in all offline communications with the Taxpayers and other concerned persons relating to Goods and Service Tax – regarding.

No. CT/GST-40/2020/64 : In inviting a reference to the above subject, I am to inform you that Hon'ble Supreme Court of India in their order in the **W.P. (C) No. 320 of 2022** (in case of Pradeep Goyal Vs Union of India and Others) have directed to implement a system of electronic generation of a DIN (Document Identification Number) for all communications sent by State Tax Officers to taxpayers and other concerned persons so as to bring in transparency and accountability in the indirect tax administration.

2. As per the above directions, a new facility for generation of a document **Reference Number (RFN)** has been developed by GSTN in the GST Back Office for the tax officers and in the GST Common Portal for verification of such RFNs by the taxpayers.

2. As per the above directions, a new facility for generation of a document **Reference Number (RFN)** has been developed by GSTN in the GST Back Office for the tax officers and in the GST Common Portal for verification of such RFNs by the taxpayers. The facility is now available both in GST Back Office and the GST Common Portal. The RFNs generated can also be viewed by the taxpayers and other concerned persons in the GST Common Portal with login and without login as well.

3. The documents, notices, orders, intimations etc. generated by the Tax Officers in the GST Back Office (i.e. system generated) using their Digital Signature Certificates or otherwise are generated with a unique reference number or ARN, which is also printed and communicated on such documents. The same can be seen by the taxpayers in the GST Common Portal in their dashboards. In those types of communications, the RFNs need not be generated again.

4. In all other types of communications between the Tax Officers(s) and the taxpayers and other concerned persons relating to administration of GST, the **RFN must be generated and mentioned on the document(s)**. An advisory for generation of such RFN by the Tax Officers in the GST Back Office application and search and verification of the same by the taxpayers in GST Common Portal is enclosed for kind reference.

5. It is hereby instructed to all concerned that **all offline communications** with taxpayers and other concerned relating to administration of GST Back Office (BO) and communicated to the taxpayers/concerned persons through GST Common Portal) **must be superscribed with the RFN** generated from the GST Back Office (BO) in the process enumerated in the advisory enclosed.

CITATION	PARTICULARS
Ashok Commercial Enterprises v. Assistant Commissioner of Income Taxation – [2023] 154 taxmann.com 144 (Bombay)	Whether where assessment order does not bear a DIN and said order issued without a DIN does not bear required format set out in paragraph 3 of Circular No. 19/2019, said order ought to be treated as invalid and deemed never to have been issued.The CBDT, in exercise of powers under section 119(1) has issued a Circular No. 19/2019 dated 14-8-2019 providing that no communication shall be issued by any Income-tax Authority inter alia relating to assessment orders, statutory or otherwise, inquiries, approvals, etc. to an assessee or any other person on or after 1-10-2019 unless a computer generated DIN has been allotted and is quoted in the body of such communication.

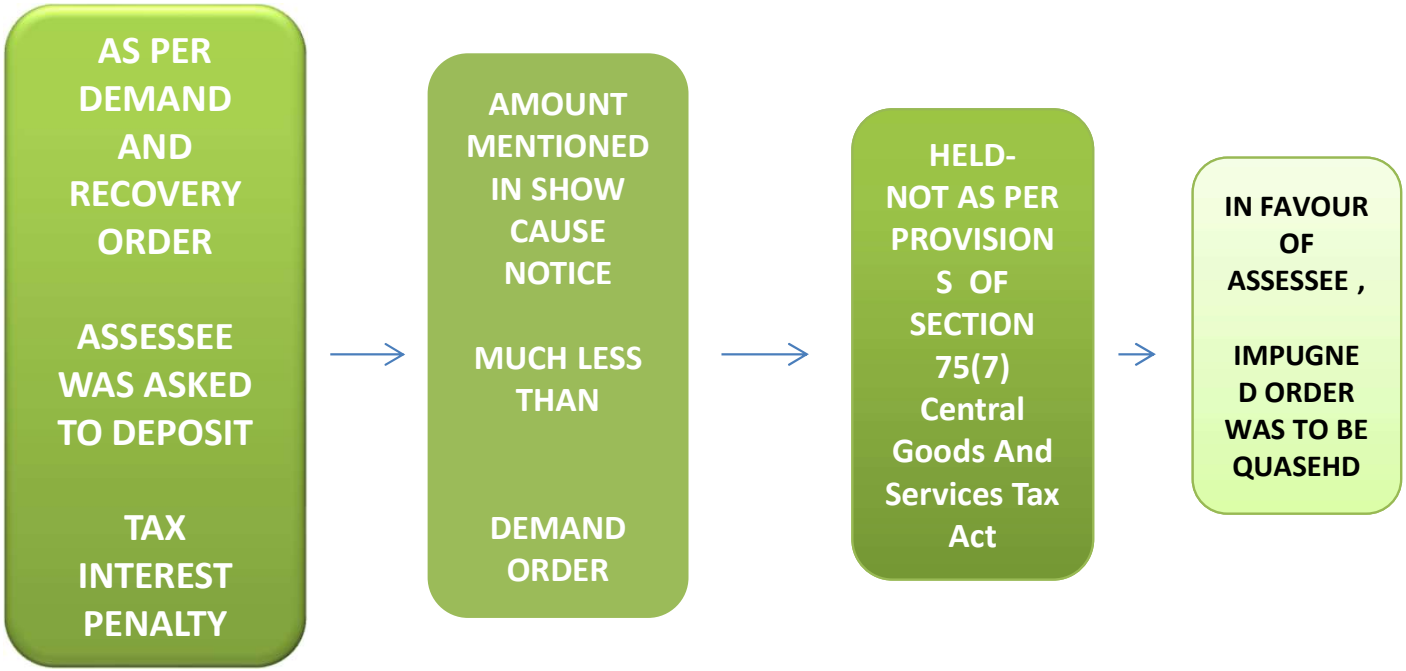
Notice and order should be on same lines(Order beyond SCN)

- The adjudicating authority has to pass his order within the parameter of the allegations levelled in the show cause notice

- In the case of Commissioner of customs, Mumbai v. Toyo Engineering India ltd. [(2006) 7 SCC 592] , the apex court while delivering judgement under para 16 held that, the department cannot travel beyond the scope of the show cause notice

SECTION: 75(7) AMOUNT OF TAX PENALTY DEMANED IN IMPUGNED ORDER CANNOT EXCEED AMOUNT SPECIFIED IN SHOW CAUSE NOTICE

[2024] 161 taxmann.com 659 (Uttarakhand)
HIGH COURT OF UTTARAKHAND
Horizon Packs (P.) Ltd.
v.
Union of India*



KALIDAS MEDICAL STORE VS. STATE OF U.P. [2024] 162 TAXMANN.COM 413 (ALLAHABAD)

Demand in Order u/s 73(9)

>

Demand in SCN u/s 73(1)

VIOLATION OF SECTION 75(7)

Also VIOLATION OF PRINCIPLE OF NATURAL JUSTICE, as Taxpayer was NOT given OPPORTUNITY OF BEING HEARD

HELD THAT:

DEMAND arising under adjudication ORDER MAY NOT EXCEED DEMAND FOR WHICH SHOW CAUSE NOTICE might have been issued - Appropriate order were to be passed AFTER AFFORDING OPPORTUNITY OF HEARING to assessee and re-adjudicating matter

Order issued on grounds other than grounds specified in SCN

1	**[2006] 2006 taxmann.com 1488 (SC)** **SUPREME COURT OF INDIA Commissioner of Customs, Mumbai** **v. Toyo Engineering India Ltd.**	**Section 129B of the Customs Act, 1962 - Appeal-New grounds - submissions not made before adjudicating authority and lower appellate authority, cannot be raised before CESTAT** **The Department cannot be travel beyond the show cause notice. Even in the grounds of appeals these points cannot been taken.**
2	[2022] 138 taxmann.com 436 (Gujarat) HIGH COURT OF GUJARAT Pantone Enterprises (P.) Ltd. v. Union of India*	Registration - Cancellation of registration - Violation of principles of natural justice - Registration was cancelled on ground of availing fake input tax credit while applicants had done no activity - However, show cause notice issued by department was bereft of material particulars - Reasons assigned was without any basis being found in SCN - Sufficient opportunity was not provided while adjudicating such SCN and impugned order also lacked reasons - Department had chosen to proceed on ground other than reason given in original SCN - While rejecting application for revocation of cancellation of rejection, principles of natural justice was also not followed - Department failed to adhere to instructions issued by CBIC - Impugned SCN and consequential orders cancelling registration and further order rejecting revocation application seeking restoration of registration were to be quashed and set aside -
3	[2007] 11 STT 6 (SC) SUPREME COURT OF INDIA Commissioner of Central Excise, Nagpur v. Ballarpur Industries Ltd.	The Supreme court held that the show cause notice is the foundation in the matter of levy and recovery of duty, penalty and interest; where a certain matter has not been invoked in the show cause notice, it would not be opened to the Central Excise Officer to invoke the same subsequently.

Opportunity of personal hearing

Sr. No	Citation	Held
1	**[2022] 136 taxmann.com 275 (Allahabad) HIGH COURT OF ALLAHABAD Bharat Mint and Allied Chemicals *v.* Commissioner of Commercial-tax***	**Demand - Principles of natural justice - Where an adverse decision is contemplated, such a person need not even request for opportunity of personal hearing, it is mandatory for authority to afford an opportunity of personal hearing as per section 75(4) - Section 75(4) specifically mandates for opportunity of hearing before passing an order - Perusal of adjudication order showed that opportunity of hearing was not provided to assessee - Availability of alternate remedy is not a complete bar to entertain writ petition where there is a gross violation of principles of natural justice - Impugned order in violation of principles of natural justice is an exception to rule of alternate remedy - Impugned order was to be set aside - Department should pass order afresh after giving personal hearing - [Section 75 of Central Goods and Services Tax Act, 2017/Uttar Pradesh Goods and Services Tax Act, 2017] [Paras 13, 14, 15, 17, 18 and 19] [In favour of assessee]**
2	**[2022] 143 taxmann.com 381 (Gujarat) HIGH COURT OF GUJARAT Graziano Trasmissioni India (P.) Ltd. *v.* State of Gujarat***	**GST : Even without any request for personal hearing made by party concerned, opportunity of personal hearing was to be provided when any adverse decision was contemplated against person chargeable with tax or penalty**

Sr. No	Citation	Held
3	**[2023] 148 taxmann.com 394 (Madras) HIGH COURT OF MADRAS Sendhil Kumar *v.* State Tax Officer***	**Assessment - Demand and penalty - Natural Justice - Personal hearing - Section 75(4) of CGST Act, 2017 specifically requires grant of hearing opportunity where adverse decision is contemplated against assessee - Impugned order imposed tax liability as well as penalty on assessee-petitioner - Admittedly, no personal hearing was afforded to petitioner in impugned assessment proceedings - Therefore, impugned assessment order was to be quashed on ground of violation of principles of natural justice [Section 75 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 4 and 7] [In favour of assessee/Matter remanded]**
4	**2024 (2) TMI 237 - BOMBAY HIGH COURT MAULI SAI DEVELOPERS PRIVATE LIMITED VERSUS UNION OF INDIA, STATE OF MAHARASHTRA DEPUTY COMMISSIONER STATE TAX, (E-711) , MUMBAI**	Violation of principles of natural justice - no opportunity of personal hearing granted to the Petitioner - Petitioner had not paid or short paid CGST/MGST - **HELD THAT:- From a plain reading of Section 75(4), it is absolutely clear that, even in a case where the person chargeable with tax or penalty has not requested for a personal hearing, the Department is bound to give a personal hearing when an adverse decision is contemplated against such a person. This would be irrespective of the fact as to whether the Petitioner had asked for such a personal hearing or not.** **In the present case, since the said Order is in violation of the principles of natural justice and ex-facie contrary to the provisions of Section 75(4) of the CGST/MGST Act.**

Sr. No	Citation	Held
5	**2023 (12) TMI 666 - BOMBAY HIGH COURT HYDRO PNEUMATIC ACCESSORIES INDIA PVT. LTD. VERSUS THE ASSISTANT COMMISSIONER OF STATE TAX, MULAND WEST & ANR.**	**Violation of principles of natural justice - impugned order is passed without giving any personal hearing although mandated by Section 75(4) of the CGST Act - HELD THAT:- There has been a violation of principles of natural justice in passing the impugned order for more than one reason; firstly, under Section 75 sub-section (4), it is mandatory for the respondents to give a personal hearing to the petitioner if an adverse order is contemplated to be passed against the assessee. In the facts of the present case, a personal hearing was not given to the petitioner, inspite of an adverse order having been passed.** **The impugned order would certainly be required to be held to be in breach of principles of natural justice so as to enable this Court to exercise jurisdiction under Article 226 of the Constitution of India although, an alternate remedy is available - order under Section 73 dated 26th July 2023 is quashed and set aside.**

SUMIT ENTERPRISES VS. STATE OF UTTAR PRADESH
[2023] 155 TAXMANN.COM 190 (ALLAHABAD)

GST PORTAL INFORMATION

Notice u/s 74 and Reminder Notice thereof

Particulars	Information on Portal
Last Date to Reply	YES
Date, Time and Venue of Personal Hearing	NA

Consequently

Final Order u/s 74 Passed

HELD THAT:

Section 75(4) mandates granting of an opportunity of hearing where an adverse decision is contemplated against a person; ORDER passed otherwise was VIOLATIVE OF PRINCIPLES OF NATURAL JUSTICE.

[2024] 161 taxmann.com 266 (Madras)

HIGH COURT OF MADRAS

Sanjai Gandhi

v.

Deputy Commercial Tax Officer (ST)

SENTHILKUMAR RAMAMOORTHY, J.

W.P. NO. 8676 OF 2024

W.M.P. NOS. 9678 & 9679 OF 2024

APRIL 1, 2024

TAX DEMAND COULD NOT BE CONFIRMED WITHOUT PROVIDING OPPORTUNITY OF BEING HEARD

Demands – Tax or ITC not involving fraud, etc. - Discrepancies in Form GSTR-3B and GSTR-2B - Period 2018-19 - Assessee was engaged in business of supplying water purifiers and R.O. systems and providing services in relation thereto - Upon examining returns of assessee, a notice in Form GST ASMT 10 was issued - Assessee replied thereto - Thereafter, impugned order was passed under section 73 demanding tax on ground that there were discrepancies between input tax credit (ITC) claimed by assessee in Form GSTR 3B on comparison with GSTR 2B` - HELD : It was found that such tax demand was confirmed without petitioner being heard - Impugned order was to be set aside on condition that assessee remitted 10 per cent of disputed tax demand and assessee was also to be permitted to submit a reply to show cause notice and upon being satisfied that 10 per cent of disputed tax demand was received, authority was to provide a reasonable opportunity to assessee, including a personal hearing, and thereafter issue a fresh order [Section 73 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Paras 5 and 6] [In favour of assessee/Matter remanded]

Restoration of Cancelled registration on ground of vague SCN without specifying the grounds mentioned in Section 29 or without any inquiry being undertaken or without opportunity of being heard in person or ignoring the reply.

S. No	Name & Citation	Particulars
1.	[2022] 141 taxmann.com 265 (Allahabad) HIGH COURT OF ALLAHABAD Apparent Marketing (P.) Ltd. v. State of U.P.*	Registration once granted, could be cancelled only under five circumstances detailed in section 29 - Said section does not contain any provision that registration could be cancelled merely by describing assessee as bogus without any supporting material - It was not a case of department that assessee had not commenced business within six months of grant of registration or he had not furnished returns continuously for six months – Further initial show cause notice issued to assessee was vague as it did not mention any of circumstances mentioned in section 29 or any other specific charge with supporting material - Thus confirmation of cancellation by describing assessee as bogus in subsequent proceedings mean that orders were issued without granting any opportunity to assessee to rebut charge of being bogus - Principles of natural justice were also violated at each stage of proceedings
2.	[2022] 141 taxmann.com 263 (Allahabad) HIGH COURT OF ALLAHABAD Drs Wood Products v. State of U.P	GST : Where without relying upon any report or any inquiry, show cause notice issued to petitioner alleging that 'taxpayer was found non-functioning/non-existing at principal place of business' and application for revocation of cancellation of registration was rejected without recording any reasons; registration of petitioner was directed to be renewed forthwith; petitioner was harassed therefore, State Government was liable to pay cost of Rs. 50,000 to petitioner
3.	[2022] 141 taxmann.com 348 (Gujarat) HIGH COURT OF GUJARAT Vinayak Metal v. State of Gujarat*	Registration - Cancellation of - Show cause notice issued to petitioner was absolutely vague, bereft of any material particulars - Impugned order was also vague, non-speaking order, cryptic in nature and reason of cancellation were not decipherable therefrom - Cancellation of registration to make dealer liable to both civil and penal consequences - Principles of natural justice were violated - Show cause notices and consequential orders were to be quashed - Matter was remitted to Concerned Authority for denovo proceedings in accordance with law - Consequential respective GST registration to be revived [Section 29 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017] [Para 7][In favour of assessee]
4.	[2022] 137 taxmann.com 332 (Gujarat) HIGH COURT OF GUJARAT Aggarwal Dyeing and Printing Works v. State of Gujarat*	Registration - Cancellation of registration - Non-speaking order - Department ought to have incorporated specific details to contents of a show cause notice - Any prudent person would fail to respond to a SCN bereft of details thereby making mechanism of issuing SCN a mere formality and an eye wash - Department had failed to extend sufficient opportunity of hearing before passing impugned order, in spite of specific request for adjournment - Impugned order was non-speaking, cryptic in nature and reason of cancellation was not decipherable therefrom - SCN and consequential impugned order were to be quashed and set aside [Sections 29 and 30 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017] [Paras 14, 15, 15.1, 16 and 19] [In favour of assessee]

5.	**[2022] 141 taxmann.com 226 (Gujarat) HIGH COURT OF GUJARAT Vahanvati Steels v. State of Gujarat***	**Registration - Cancellation - Vague SCN and order - In earlier round of litigation, show cause notice proposing cancellation of petitioner's GST registration, was set aside being vague and unreasoned, with liberty given to assessing officer to issue fresh reasoned SCN - Contrary to expectation of issuing fresh SCN, assessing officer went ahead with cancellation of GST registration again with equally vague and unreasoned order - Petitioner's application for restoration of registration was also rejected by a totally absurd and vague order - HELD : Without issuing any notice to assessing officer for contempt of Court, as pleaded by petitioner, he was warned that in future, if he would pass any such vague order or issue vague SCN, it would be his last day in office - Impugned orders were quashed and registration of petitioner was restored [Section 29 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act 2017 - Article 226 of Constitution of India][Paras 7 to 13]**
6.	[2022] 140 taxmann.com 492 (Gujarat) HIGH COURT OF GUJARAT Shah Industries v. State of Gujarat*	Show cause notice - Cancellation of GST registration - Vague SCN - Show cause notice was bereft on any material particulars or information - No effective response of any sort can be given to such vague notice - HELD : Show cause notice was to be quashed with liberty to Department to issue fresh show cause notice containing all necessary information and details for purpose of effectively responding to same [Sections 29, read with section 73 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017 - Article 226 of Constitution of India][Paras 4 and 5] [In favour of assessee]
7.	[2022] 138 taxmann.com 109 (Karnataka) HIGH COURT OF KARNATAKA Unique Instruments and Mfrs. (P.) Ltd. v. State of Karnataka*	GST : Cancellation of registration without providing opportunity of hearing is not sustainable; mere consideration of reply and submissions do not amount to affording an opportunity of hearing. Registration - Cancellation of registration - Personal hearing - Petitioner challenged impugned order cancelling registration contending that no opportunity of hearing was afforded before passing said order - Petitioner's argument was that mere consideration of reply and submissions would not be sufficient and opportunity of personal hearing was to be granted - HELD : Examination of reply and submissions by itself would not indicate that assessee was present during hearing of proceedings leading to cancellation of registration - Opportunity of hearing is a statutory mandate without which there shall be no cancellation of registration - Order of cancellation was to be set aside and matter was to be remitted for reconsideration [Section 29 of Central Goods and Services Tax Act, 2017/Karnataka Goods and Services Tax Act, 2017] [Para 2] [In favour of assessee]
8.	[2020] 119 taxmann.com 113 (Bombay) HIGH COURT OF BOMBAY Great Sands Consulting (P.) Ltd. v. Union of India*	GST : Where Competent Authority cancelled registration of assessee stating that in response to show cause notice, no reply was given by assessee, since it was evident from record that assessee had submitted reply to show cause notice within time prescribed in notice, impugned order cancelling registration of assessee deserved to be set aside

9	**2022] 138 taxmann.com 284 (TRIPURA) HIGH COURT OF TRIPURA OPC Assets Solutions (P.) Ltd. v. State of Tripura**	**– Show cause notice was issued to petitioner-assessee in printed blank format seeking to cancel registration on ground of 'non-compliance of any specified provisions in GST Act or Rules made thereunder as may be prescribed' but it was not specified in show cause notice which provisions of GST Act or Rules were not complied with which was likely to result into cancellation of registration of assessee** **- Thus, Show Cause Notice asked assessee to meet with non-existent and non-disclosed grounds**
10.	[2022] 136 taxmann.com 138 (Jharkhand) HIGH COURT OF JHARKHAND NKAS Services (P.) Ltd. v. State of Jharkhand	HELD: Unless foundation of case was laid down in SCN, assessee would be precluded from defending charges - Impugned SCN did not fulfil ingredients of proper SCN and amounted to violation of principles of natural justice - Impugned SCN and summary of SCN were quashed
11.	Ahmed Enterprises v. Union of India [2023] 157 taxmann.com 402 (Bombay) HIGH COURT OF BOMBAY	Where registration was cancelled for obtaining it by means of fraud, etc. and though assessee did not receive SCN, order of cancellation referred that assessee had replied to SCN and furthermore, no reason was given for registration cancellation, impugned order was to be set aside Cancellation of registration - Violation of natural justice - Show cause notice was issued for cancellation of registration on ground that registration was obtained by means of fraud, wilful misstatement or suppression of facts - Show cause notice for cancellation of registration was not received by assessee, as assessee was out of station and eventually an order came to be passed - Surprisingly order of cancellation referred to reply filed by assessee, when no reply was actually filed - Without setting out any reason, petitioner's registration was cancelled - Appeal was rejected by impugned order on ground that it was filed beyond prescribed period of limitation - HELD : In identical circumstances, this Court had set aside orders passed by respondent - In view of same, respondent-authority should issue a fresh show cause notice [Section 29, read with section 107 of CGST, 2017] [Paras 7 and 9] [In favour of assessee/Matter remanded]
12.	[2020] 120 taxmann.com 279 (Allahabad) HIGH COURT OF ALLAHABAD Ashwani Agarwal v. Union Of India*	Section 29, read with section 30, of the Central Goods and Services Tax Act, 2017/Section 29, read with section 30, of the Uttar Pradesh Goods and Services Tax Act, 2017 - Registration - Cancellation of - Registration of assessee under GST was cancelled by Superintendent, - Where GST authority cancelled registration of assessee without considering reply of assessee to show cause notice, impugned order was liable to be set aside and matter was to be decided afresh.Assessee challenged impugned order on ground that it had filed reply to show cause notice and thus, impugned order was passed without application of mind - Whether since impugned order mentioned response of assessee to show cause notice, contrary order passed was liable to be set aside and issue was to be decided afresh - Held, yes [Paras 9 and 10][In favour of assessee]

Monetary limits for SCN – 31/2018 (Circular) read with Circular 169/01/2022-GST

Designation of Officer	Monetary limit of the amount of CGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST	Monetary limit of the amount of IGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST Act made applicable to IGST	Monetary limit of the amount of CGST and IGST (including cess) for issuance of show cause notices & orders u/s 73 & 74 of CGST Act made applicable to IGST
Superintendent	Up to Rs. 10 lakhs	Up to Rs. 20 lakhs	Up to Rs. 20 lakhs
Deputy or Assistant Commissioner	Above Rs. 10 lakhs up to Rs. 1 crore	Above Rs. 20 lakhs up to Rs. 2 crore	Above Rs. 20 lakhs up to Rs. 2 crore
Additional or Joint Commissioner	Above Rs. 1 Crore	Above Rs. 2 Crore	Above Rs. 2 Crore

GST Laws Vs Article 21 of Constitution of India

CITATION	PARTICULARS
PrakashPurohit *v.* Commissioner, CGST [2023] 148 taxmann.com 242 (Rajasthan) HIGH COURT OF RAJASTHAN	Petitioner would not be able to continue with business in absence of GST registration and which could lead to **deprivation of means of livelihood**, **resulting into violation of right to life and liberty as enshrined in article 21 of Constitution of India** - Therefore, impugned order was to be set aside and petitioner was directed to file appeal against cancellation of GST registration to competent authority within 10 days **[In favour of assessee]**
Vinod Kumar *v.* Commissioner Uttarakhand State GST [2022] 141 taxmann.com 503 (Uttarakhand) HIGH COURT OF UTTARAKHAND	After serving notice on portal, GST registration of assessee was cancelled on ground that returns were not filed for more than 6 months - **Assessee's appeal was rejected on ground that same was time barred** - Single Judge Bench of High Court rejected writ petition on ground that alternate remedy was available - HELD: **Mere giving notice on website was not sufficient;** a personal notice should be given before cancellation of registration - High Court should invoked writ jurisdiction under Article 226 - Denial of GST registration affects right to livelihood of person - **Cancellation of registration and denying remedy of appeal was violative of article21 of Constitution of India** - Writ petition was maintainable [Section 29 of CGST Act,2017/Articles 21 and 226 of Constitution of India] [Paras 7, 8, 9 and 17] [In favour of assessee/Matter remanded back]

CITATION	PARTICULARS
Tvl. Suguna Cutpiece Center *v.* Appellate Deputy Commissioner (ST) (GST) [2022] 135 taxmann.com 234 (Madras) HIGH COURT OF MADRAS	**GST provisions cannot be interpreted to deny right of a citizen to carry on trade and commerce; Constitutional guarantee under article 19(1)(g) is unconditional and must be enforced regardless of defect in GST scheme** Registration - Cancellation of registration - Constitutional validity - Provisions of GST law cannot be interpreted in such a manner to debar a person either from obtaining registration or reviving lapsed/cancelled registration - Such an interpretation would not only be contrary to article 19(1)(g) but also in violation of articles 14 and 21 - GST provisions cannot be interpreted so as to deny right to carry on trade and commerce to a citizen - Constitutional guarantee is unconditional and unequivocal and must be enforced regardless of defect in scheme of GST - Right to carry on trade or profession cannot be curtailed; only reasonable restriction can be imposed [Sections 29 and 30 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] - [Articles14, 19(1)(g) and 21 of Constitution of India] [Paras 206 and 225] [In favour of assessee]

CITATION	PARTICULARS
Mukesh Kumar Tyagi *v.* Senior Intelligence Officer* HIGH COURT OF UTTARAKHAND [2023] 156 taxmann.com 131 (Uttarakhand)	**In favour of revenue** Assessee was summoned by revenue authority - Assessee had already appeared before GST authority in response to a previous summons in 2020 - Assessee contended that revenue authority was investigating matter for last more than two years and that there was no need to summon again, further **revenue was not discharging their duties efficiently and that his right to life and liberty under Article21 of Constitution of India was being violated - Revenue authority contended that assessee was being summoned so as to tender statement and that allegations were serious** and needed to be further investigated, further assessee's anticipatory bail was also dismissed - HELD **: Delay in concluding proceedings per se is not a ground to quash summoning order unless there are other attending circumstances requiring Court's interference - No reason for interference, so petition dismissed at admission stage only**

JURISPRUDENCE

The following case laws are worth considering where in the Hon'ble courts have duly held that the Penalty u/s 129 cannot be levied and reliefs have been provided for instances covered by Procedural lapses and where there is no intent to evade or Clerical errors.

Sr. No.	Name & Citation	Particulars
1	Satyam Shivam Papers Pvt. Ltd. Vs Asst. Commissioner ST (SUPREME COURT OF INDIA) [2022] 134 taxmann.com 241 (SC)	"Inference by officer that petitioner was attempting to evade tax was baseless - The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. Considering department's conduct and harassment faced by taxpayer, costs of Rs. 59,000 was imposed in addition to costs of Rs. 10,000 imposed by High Court [Section 129 of Central Goods and Services Tax Act, 2017/Telangana Goods and Services Tax Act, 2017] [Paras 8 and 9] [In favour of assessee]."
2	M/s. Modern Traders Vs. State Of U P And 2 Others (Allahabad High Court)	HC Quashes Order Detaining Goods For Non-Accompaniment Of E-Way Bill. The High Court Held that As e-way bill was produced on the same day of the interception of goods along with documents indicating payment of IGST but before seizure order is passed, no justification for passing orders of seizure of goods/vehicle and tax demand/penalty –order quashed, Respondent directed to immediately release goods/vehicle

3	**[2020] 113 taxmann.com 224 (Allahabad)** **HIGH COURT of ALLAHABAD** **Mudassirun Nisan** **v.** **Addl. Commissioner Grade Ii Appeal-I***	**GST: Where Competent Authority vide order dated 10-11-2017 passed under section129(1) had detained goods of assessee under transport from Nagpur to Ambedkar Nagar on ground that e-way bill was not accompanied with goods and further imposed penalty under section129(3), both orders impugned could not be sustained**
4	[2018] 99 taxmann.com 24 (Allahabad) HIGH COURT OF ALLAHABAD Harley Foods Products (P.) Ltd. v. State of U.P.*	CGST/Uttar Pradesh GST : Where Competent Authority had seized goods of assessee under transport from Ahmedabad to Meerut on ground that at time of interception E-Way Bill-01 had not been produced along with other documents, since goods were accompanied with all requisite documents including Gujarat E-Way Bill, order of seizure was illegal
5	2020 (10) TMI 1128 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH INTEGRATED CONSTRUCTIVE SOLUTIONS VERSUS ACST & E-CUM-PROPER OFFICER, CHAMBA CIRCLE	Detention of goods and vehicle - validity of EWB - the vehicle no. in the Part B of the EWB not updated - contravention of Rule 138(5) of CGST/SGST Rules, 2017 - - HELD THAT:- It appears that there is no dispute regarding quantity of goods and further all concerns documents were placed before the proper officer. The only mistake the E-way Bill part-B was that the number of the vehicle in which the material was transhipped had not been entered at the time of inspection of the vehicle. As there is no doubt that the taxpayer has made procedural lapse and violated the provisions of the CGST/HPGST Act, 2017 and HPGST Rules 138(10) which says as "Provided further that where, under circumstances of an exceptional nature, including transshipment, the goods cannot be transported within validity period of E-way Bill, the transporter may extend the validity period after uploading the detail in part B of the FORM GST EWB-01, if required". Therefore appellant should have updated the part 8 of EWB before resuming his journey further. So keeping in view the above facts the appellant is liable to pay minor penalty. The tax and penalty deposited by the appellant under Section 129(3) may be refunded and a penalty of Rs. Ten Thousand only is imposed on the taxpayer under Section 122(xiv) of the Act - appeal allowed.

6	**[2020] 114 taxmann.com 564 (Kerala)** **HIGH COURT OF KERALA** **Umiya Enterprise** **v.** **Assistant State Tax Officer*** **ALEXANDER THOMAS, J.** **W.P. (C). NO. 1141 OF 2020(P)** **JANUARY 31, 2020**	**Section129 of the Central Goods and Services Tax Act, 2017/Section 129 of the Kerala State Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority detained goods of assessee in transit from one State to another State as well as vehicle on ground that no IGST was collected in tax invoice and passed order demanding tax and penalty - Assessee filed writ petition contending that in tax invoice element of tax happened to be wrongly shown as CGST and SGST at rate of 9 per cent as against IGST of 18 per cent - This was an inadvertent mistake committed by new accountant of supplier - In E-way Bill tax had been correctly declared as IGST Rs. 1.20 lakhs - Whether Competent Authority was to be directed to release goods and vehicle on assessee executing a simple bond for demanded value - Held, yes [Para 8] [In favour of assessee]**
7	2022 (4) TMI 704 - MADHYA PRADESH HIGH COURT M/S. CREATE CONSULTS, REPRESENTED THROUGH ITS PROPRIETOR SHRI RALSTON ANIL RAJVAIDYA VERSUS THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY, COMMISSIONER, STATE GST, JOINT COMMISSIONER, STATE TAX CUM APPELLATE OFFICER STATE GST, STATE TAX OFFICER, OFFICE OF ASSISTANT COMMISSIONER, MADHYA PRADESH	Refund alongwith the interest - generation of e-way bill in the name of petitioner was a bona fide mistake or not - Section 129 of Central Goods and Service Tax Act, 2017 - HELD THAT:- Apparently, courier receipt/invoice and eway bill, pertains to same transaction but the generation of e-way bill is in incorrect name. The mistake appears to be bona fide inasmuch as the detail of vehicle, dispatch date is same. The case in hand appears to be a case where e-way bill was generated wrongly in the name of petitioner on account of some clerical or typographical error, therefore, the impugned orders are quashed.

8	2020 (10) TMI 1128 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH INTEGRATED CONSTRUCTIVE SOLUTIONS VERSUS ACST & E-CUM-PROPER OFFICER, CHAMBA CIRCLE	Detention of goods and vehicle - validity of EWB - the vehicle no. in the Part B of the EWB not updated - contravention of Rule 138(5) of CGST/SGST Rules, 2017 - HELD THAT:- It appears that there is no dispute regarding quantity of goods and further all concerns documents were placed before the proper officer. The only mistake the E-way Bill part-B was that the number of the vehicle in which the material was transhipped had not been entered at the time of inspection of the vehicle. As there is no doubt that the taxpayer has made procedural lapse and violated the provisions of the CGST/HPGST Act, 2017 and HPGST Rules 138(10) which says as "Provided further that where, under circumstances of an exceptional nature, including transshipment, the goods cannot be transported within validity period of E-way Bill, the transporter may extend the validity period after uploading the detail in part B of the FORM GST EWB-01, if required". Therefore appellant should have updated the part 8 of EWB before resuming his journey further. So keeping in view the above facts the appellant is liable to pay minor penalty. The tax and penalty deposited by the appellant under Section 129(3) may be refunded and a penalty of Rs. Ten Thousand only is imposed on the taxpayer under Section 122(xiv) of the Act - appeal allowed.

9	**[2020] 114 taxmann.com 564 (Kerala)** **HIGH COURT OF KERALA** **Umiya Enterprise** **v.** **Assistant State Tax Officer*** **ALEXANDER THOMAS, J.** **W.P. (C). NO. 1141 OF 2020(P)** **JANUARY 31, 2020**	**Section129 of the Central Goods and Services Tax Act, 2017/Section 129 of the Kerala State Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority detained goods of assessee in transit from one State to another State as well as vehicle on ground that no IGST was collected in tax invoice and passed order demanding tax and penalty - Assessee filed writ petition contending that in tax invoice element of tax happened to be wrongly shown as CGST and SGST at rate of 9 per cent as against IGST of 18 per cent - This was an inadvertent mistake committed by new accountant of supplier - In E-way Bill tax had been correctly declared as IGST Rs. 1.20 lakhs - Whether Competent Authority was to be directed to release goods and vehicle on assessee executing a simple bond for demanded value - Held, yes [Para 8] [In favour of assessee]**
10	M/s Commercial Steel co. versus the Assistant of State tax reported as 2020-VIL-116-TEL, dated 04.03.2020	"It has been held as under: …merely on the basis of the fact that vehicle is found at a different route does not indicate that the petitioner intends to sell such goods locally and evade payment of CGST and SGST when IGST liability has already been discharged by the petitioner considering such supply as inter-state supply. Thus, amount collected by the department towards tax and penalty under the CGST and SGST act, 2017 under the threat of detaining vehicle is arbitrary and is in violation of Articles 14, 265 and 300-A of the constitution of India, Accordingly, said amount is required to be refunded by the department along with interest @ 6% per annum."

11	**Bhushan Power & Steel Ltd Vs ACST&E (Proper Officer) Circle Mall Road [2020] 114 taxmann.com 454 (AA- GST - HP)**	**"Where Assistant Commissioner raised additional amount of tax and imposed penalty on ground that e-way bill issued to assessee for movement of goods had expired, in view of fact that Rule 138(10) mentions that validity of e-way bill may be extended within 8 hours from time of its expiry, but, in instant case vehicle was practically apprehended in almost 08 to 09 hours of expiry of e-way bill, prima facie it appeared that assessee had not been given reasonable opportunity to update Part-A of e-way bill and, moreover, it also apparent that Part-B of e-way bill was duly filled which put to rest any doubt about intention of assessee to evade tax, impugned order passed by authority below was to be set aside"** **"In the view of above circumstances the instant appeals are accepted and the order passed by Asst. Commissioner State Taxes & Excise-cum-Proper Officer, the Mall Road Circle, Shimla are set aside. Since the appellant has made minor procedural lapse as required to follow under rule 138(10) therefore a penalty of Rs. One thousand only (Rs- 1000/- IGST Act) in each case is imposed on the tax payer under section 125 under the CGST/HPGST Act 2017**
12	[2020] 116 taxmann.com 25 (Gujarat) HIGH COURT OF GUJARAT Meghmani Organics Ltd. v. State of Gujarat*	GST: Where Competent Authority had detained goods of assessee under transport and passed order under section129(3) imposing tax and penalty without giving opportunity of hearing, impugned order deserved to be set aside and Competent Authority was to be directed to pass appropriate order after giving opportunity of hearing to assessee

13	[2020] 121 taxmann.com 104 (AA- GST - HP) Appellate Authority - GST, HIMACHAL PRADESH Integrated Constructive Solutions v. ACST & E-Cum-Proper Officer, Chamba Circle ROHIT CHAUHAN, MEMBER APPEAL NO. 018 OF 2019 ENDST. NO. EXN. -018/2019-AA/GST SHIMLA HP - 3159 - 64 FEBRUARY 14, 2020	Section 129, read with section 122, of the Central Goods and Services Tax Act, 2017/Section 129, read with section 122, of the Himachal Pradesh Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Held - Whether as assessee had made procedural lapse and violated provisions of GST Act, it was liable to pay minor penalty under section 122 - Held, yes - Whether impugned order deserved to be set aside - Held, yes - Whether a penalty of Rs. 10,000 was to be imposed upon assessee under section 122 - Held, yes [Paras 8, 9 and 10] [In favour of assessee]
14	[2018] 98 taxmann.com 387 (Allahabad) HIGH COURT OF ALLAHABAD Rajavat Steels v. State of U.P.* ASHOK KUMAR, J. WRIT TAX NO. 1300 OF 2018 SEPTEMBER 27, 2018	Section68, read with section129, of the Central Goods and Services Tax Act, 2017 and rules 138 and 140 of the Central Goods and Services Tax Rules, 2017/Section 68, read with section129, of the Uttar Pradesh Goods and Services Tax Act, 2017 and rules 138 and 140 of the Uttar Pradesh Goods and Services Tax Rules, 2017 - Search, seizure, etc. - Goods in movement, inspection of (NR) - Competent Authority had seized goods of assessee under transport and vehicle on ground that in invoice, E-way bill and weigh slip truck number was mentioned being U.P. - 78 - DN 7983 instead of U.P. - 78 - DN 7938 - Whether since due to mistake or human error vehicle number was mentioned different, Competent Authority was to be directed to release goods and vehicle on assessee furnishing indemnity bond to extent of amount of penalty demanded - Held, yes [Para 11] [In favour of assessee]

15	2022 (4) TMI 352 - ALLAHABAD HIGH COURT M/S A.S. ENTERPRISE VERSUS COMMISSIONER OF STATE TAX U.P. AND 2 OTHERS	Demand of tax along with interest and penalty - absence of required documents at the stage of interception of the goods and physical verification - goods imported into the State of U.P. in contravention of law or not - Section 20 of the Central Goods and Services Tax Act 2017 and Section 129(3) of the Uttar Pradesh Goods and Services Tax Act 2017 - There is no dispute to the fact that the documents that were produced by the petitioner though at the stage of the show cause notice were original tax invoices issued by the petitioner. No enquiry was made to doubt the genuineness of such tax invoices or to doubt the date of issue of such invoices. Thus, all tax invoices produced by the petitioner to cover the disputed goods are dated 31.07.2021. No enquiry appears to have been made from the revenue authorities in the State of Punjab to confirm if the transactions were genuine. Then, it is not the case of the revenue that the goods found transported were different from the goods disclosed in the tax invoices produced by the petitioner. No enquiry was conducted by the respondent authorities either from the purchasing dealers or the Assessing Authority to doubt the transaction at the end of the consignee. In view of the lack of enquiry and lack of reasonable doubt, the continued seizure and confiscation as also the demand of tax and penalty is based solely on presumptions and conjectures. While the mistake claimed by the petitioner gave rise to the valid suspicion with the revenue authorities inside State of U.P.as to the genuineness of the transaction as an inter-state sale claimed (at that stage orally), however, upon furnishing of the original tax invoices at the stage of the show cause notice itself, initial onus that rested on the assessee was discharged. The petitioner is a registered dealer. He has issued tax invoice after charging Integrated Goods and Services Tax. That evidence being undoubted, the seizure and confiscation and consequent demand of tax and penalty is based on no cogent material and evidence - though the detention did not suffer from any illegality, however, the further orders of the seizure etc. are found to be not based on any material or evidence on record.

16	**2022 (5) TMI 1075 - CALCUTTA HIGH COURT** **ASSISTANT COMMISSIONER, STATE TAX, DURGAPORE RANGE, GOVERNMENT OF WEST BENGAL VERSUS ASHOK KUAMR SUREKA, PROPRIETOR OF SUBHAM STEEL**	**Detention of goods along with the vehicle - breakdown of vehicle - non-extension of the validity of the e-way bill - intent to evade tax or not - according to the writ petitioner the vehicle transporting goods had broken down and on account of which, there was delay and there was no willful intention to evade payment of tax - HELD THAT:- In the instant case, the bona fides of the writ petitioner has to be tested on the documents, which were available on record.** **The case has to be approached by considering the bona fides of the transaction as to whether the case warrants detention of the goods and collection of tax and penalty. Admittedly, the first e-way bill dated 7thSeptember, 2019 was valid upto 9th September, 2019. Therefore, in the absence of second e-way bill, the tax authorities at Durgapur could not have intercepted or detained the vehicle. Therefore, the explanation offered by the respondent / writ petitioner was an acceptable explanation and a case cannot be made out that there was a deliberate and willful attempt on the part of the respondent / writ petitioner to evade payment of tax so as to justify invocation of the power under Section 129 of the Act.**
17	2022 (4) TMI 1095 - ALLAHABAD HIGH COURT PREMIUM TRADERS VERSUS STATE OF U.P. AND 2 OTHERS	Detention of goods alongwith vehicle - absence of e-Way Bill - undervaluation - bogus invoice -GSTIN number not mentioned on the invoice - HELD THAT:- It is admitted case of the respondents that the invoice accompanied with the goods in question was issued by the petitioner. Therefore, the respondent no.3 has committed a manifest error of law not to afford any opportunity of hearing to the petitioner despite persuasion made by the petitioner. Thus, the impugned order under Section 129(1)(b) of the CGST/UPGST Act, 2017 has been passed in breach of principles of natural justice. Consequently, the impugned order dated 14.03.2022, under Section 129 of CGST/UPGST Act, can not be

18	2018(5) TMI 455- Allahabad High Court VSL Alloys (India) Pvt. Ltd. Vs State Of U.P. And Another (Allahabad High Court)	GST :All the documents were accompanied the goods, details are duly mentioned which reflects from the perusal of the documents. Merely of none mentioning of the vehicle no. in Part-B of E-Way Bill cannot be a ground for seizure of the goods. We hold that the order of seizure is totally illegal and once the petitioner has placed the material and evidence with regard to its claim, it was obligatory on the part of the respondent no.2 to consider and pass an appropriate reasoned order. In this case, no reasons are assigned nor any discussion is mentioned in the impugned order of seizure and notice of penalty.

*5.1) The following case laws are worth considering where in the Hon'ble courts have duly held that the Penalty u/s 129 cannot be levied for instances covered by **Circular 64/38/2018-GST** and where there is no intent to evade or Clerical errors.*

Sr. No.	Name & Citation	Particulars
1	**2021 (3) TMI 540 - TRIPURA HIGH COURT TIRTHAMOYEE ALUMINIUM PRODUCTS VERSUS STATE OF TRIPURA, CHIEF COMMISSIONER OF STATE TAX, INSPECTOR OF STATE TAX GOVERNMENT OF TRIPURA, HINDALCO INDUSTRIES LTD., UNION OF INDIA**	**Confirmation of demand of GST with penalties - Principle of natural justice - Detention of goods - E-way bill had expired on account of a clerical error which would not result into any tax liability - HELD THAT:- As per this Circular dated 14th September, 2018, in case the goods are accompanied by an invoice as also an E-way bill, proceedings under Section 129 of the CGST Act, 2017 should not be initiated if there is a error of one or two digits in a document number mentioned in the E-way bill. In such a situation, at best, penalty of ₹ 500 & 1000/- under State and Central GST may be collected under Section 125 of the Act.**
2	2022 (5) TMI 184 - GUJARAT HIGH COURT DHABRIYA POLYWOOD LIMITED VERSUS UNION OF INDIA	Detention of goods alongwith the vehicle - Selection of the ODC vehicle type while generating e-Way Bill - clerical/technical error or done intentionally - levy of penalty/tax under Section 129(1) for such clerical errors - evasion of tax or not - HELD THAT:- CBEC/20/16/03/2017-GST Circular makes it clear that in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, the

4	**2022 (4) TMI 704 - MADHYA PRADESH HIGH COURT** **M/S. CREATE CONSULTS, REPRESENTED THROUGH ITS PROPRIETOR SHRI RALSTON ANIL RAJVAIDYA VERSUS THE STATE OF MADHYA PRADESH THROUGH PRINCIPAL SECRETARY, COMMISSIONER, STATE GST, JOINT COMMISSIONER, STATE TAX CUM APPELLATE OFFICER STATE GST, STATE TAX OFFICER, OFFICE OF ASSISTANT COMMISSIONER, MADHYA PRADESH**	**Refund alongwith the interest - generation of e-way bill in the name of petitioner was a bona fide mistake or not - Section 129 of Central Goods and Service Tax Act, 2017 - HELD THAT:- Perusal of courier receipt/invoice which has been produced on record at page 19 shows that the consignor name was AVGOL India Pvt. Ltd. and the consignee details were mentioned as SIDWIN FABRIC PVT. LTD. It is also important to note that in the same invoice, registration of truck number by which the consignment was to be transported was also mentioned as GJ-01-FT-7770. It is also relevant to note that the shipping date was mentioned as 20/06/2019. Apparently, courier receipt/invoice and eway bill, pertains to same transaction but the generation of e-way bill is in incorrect name. The mistake appears to be bona fide inasmuch as the detail of vehicle, dispatch date is same. The case in hand appears to be a case where e-way bill was generated wrongly in the name of petitioner on account of some clerical or typographical error, therefore, the impugned orders are quashed.**
5	2020 (10) TMI 1128 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH INTEGRATED CONSTRUCTIVE SOLUTIONS VERSUS ACST & E-CUM-PROPER OFFICER, CHAMBA CIRCLE	Detention of goods and vehicle - validity of EWB - the vehicle no. in the Part B of the EWB not updated - contravention of Rule 138(5) of CGST/SGST Rules, 2017 - Circular No. 64/38/2018, dated 14-9-2018 - HELD THAT:- It appears that there is no dispute regarding quantity of goods and further all concerns documents were placed before the proper officer. The only mistake the E-way Bill part-B was that the number of the vehicle in which the material was transhipped had not been entered at the time of inspection of the vehicle. As there is no doubt that the taxpayer has made procedural lapse and violated the provisions of the CGST/HPGST Act, 2017 and HPGST Rules 138(10) which says as “Provided further that where, under circumstances of an exceptional nature, including transshipment, the goods cannot be transported within validity period of E-way Bill, the transporter may extend the validity period after uploading the detail in part B of the FORM GST EWB-01, if required”. Therefore appellant should have updated the part 8 of EWB before resuming his journey further. So keeping in view the above facts the appellant is liable to pay minor penalty. The tax and penalty deposited by the appellant under Section 129(3) may be refunded and a penalty of Rs. Ten Thousand only is imposed on the taxpayer under Section 122(xiv) of the Act - appeal allowed.

6	[2020] 114 taxmann.com 564 (Kerala) HIGH COURT OF KERALA Umiya Enterprise v. Assistant State Tax Officer* ALEXANDER THOMAS, J. W.P. (C). NO. 1141 OF 2020(P) JANUARY 31, 2020	Section129 of the Central Goods and Services Tax Act, 2017/Section 129 of the Kerala State Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority detained goods of assessee in transit from one State to another State as well as vehicle on ground that no IGST was collected in tax invoice and passed order demanding tax and penalty - Assessee filed writ petition contending that in tax invoice element of tax happened to be wrongly shown as CGST and SGST at rate of 9 per cent as against IGST of 18 per cent - This was an inadvertent mistake committed by new accountant of supplier - In E-way Bill tax had been correctly declared as IGST Rs. 1.20 lakhs - Whether Competent Authority was to be directed to release goods and vehicle on assessee executing a simple bond for demanded value - Held, yes [Para 8] [In favour of assessee]
7	2021] 133 taxmann.com 165 (SC) SUPREME COURT OF INDIA State of Madhya Pradesh v. Robbins Tunnelling and Trenchless Technology (India) (P.) Ltd.*	Seizure - Detention of goods in transit - Wrong shipping address in e-way bill - Assessee imported certain goods from its parent company from USA - Its clearing agent while shipping goods from Custom Station, Mumbai to assessee's place of business in Katni (Madhya Pradesh), generated e-way bill in which by mistake erroneously entered its own name in column of consignee - Competent Authority detained aforesaid goods of assessee under transport due to wrong shipping address in e-way bill and levied tax and penalty - Appellate Authority rejected appeal of assessee and affirmed order of tax and penalty levied by Competent Authority stating that in e-way bill name and address of recipient, while matching with Bill of Entry and Bill of Lading, was not same and such mistake could not be treated to be a clerical mistake - High court held that Appellate Authority was not justified in rejecting appeal of assessee on ground that mistake committed while generating e-way bill was not a clerical mistake and quashed impugned orders - HELD : Special Leave Petition filed against judgment and order of High Court deserved to be dismissed [Section129 of Central Goods and Services Tax Act, 2017 read with rule 138 of Central Goods and Services Tax Rules, 2017Madhya Pradesh Goods and Services Tax Act, 2017]] [Para 2] [In favour of assessee]

8	**M/s Commercial Steel co. versus the Assistant of State tax reported as 2020-VIL-116-TEL, dated 04.03.2020**	**"It has been held as under:** **…merely on the basis of the fact that vehicle is found at a different route does not indicate that the petitioner intends to sell such goods locally and evade payment of CGST and SGST when IGST liability has already been discharged by the petitioner considering such supply as inter-state supply. Thus, amount collected by the department towards tax and penalty under the CGST and SGST act, 2017 under the threat of detaining vehicle is arbitrary and is in violation of Articles 14, 265 and 300-A of the constitution of India, Accordingly, said amount is required to be refunded by the department along with interest @ 6% per annum."**
9	Bhushan Power & Steel Ltd Vs ACST&E (Proper Officer) Circle Mall Road [2020] 114 taxmann.com 454 (AA- GST - HP)	"Where Assistant Commissioner raised additional amount of tax and imposed penalty on ground that e-way bill issued to assessee for movement of goods had expired, in view of fact that Rule 138(10) mentions that validity of e-way bill may be extended within 8 hours from time of its expiry, but, in instant case vehicle was practically apprehended in almost 08 to 09 hours of expiry of e-way bill, prima facie it appeared that assessee had not been given reasonable opportunity to update Part-A of e-way bill and, moreover, it also apparent that Part-B of e-way bill was duly filled which put to rest any doubt about intention of assessee to evade tax, impugned order passed by authority below was to be set aside" "In the view of above circumstances the instant appeals are accepted and the order passed by Asst. Commissioner State Taxes & Excise-cum-Proper Officer, the Mall Road Circle, Shimla are set aside. Since the appellant has made minor procedural lapse as required to follow under rule 138(10) therefore a penalty of Rs. One thousand only (Rs- 1000/- IGST Act) in each case is imposed on the tax payer under section 125 under the CGST/HPGST Act 2017 in accordance to CBIC Circular No. 64/38/2018-GST, dated 14th Sep 2018 and the State Circular no. dated 13th March 2019 and may be recovered accordingly. The judgment in these cases was reserved on 18-12-2019 which is released today.".

10	[2018] 100 taxmann.com 23 (Kerala) HIGH COURT OF KERALA Sabitha Riyaz v. Union of India* DAMA SESHADRI NAIDU, J. WP (C) NO. 34874 OF 2018 OCTOBER 31, 2018	Section68, read with section129, of the Central Goods and Services Tax Act, 2017 and rule 138 of the Central Goods and Services Tax Rules, 2017 - Section68, read with section129, of the Uttarakhand Goods and Services Tax Act, 2017 and rule 138 of the Uttarakhand Goods and Services Tax Rules, 2017 - Search, seizure, etc. - Goods in movement, inspection of - Competent Authority of Uttarakhand Goods and Services Tax Department had detained goods of assessee under transport from Kerala to Uttarakhand on ground that in E-way bill distance between Kerala and destination at Uttarakhand was shown as 280 kms instead of 2800 kms - Assessee filed writ petition before Kerala High Court seeking directions to Competent Authority for release of detained goods and contended that error in E-way bill was minor apart from being typographical and it stood covered and exempted under Circular No. 64/38/2018 - GST, dated 14-9-2018 - Whether Competent Authority was to be directed to consider assessee's request for release in terms of above circular - Held, yes [Para 6] [In favour of assessee] Circulars and Notifications: CBEC Circular No. 64/38/2018 - GST, dated 14-9-2018
11	[2020] 121 taxmann.com 104 (AA- GST - HP) Appellate Authority - GST, HIMACHAL PRADESH Integrated Constructive Solutions v. ACST & E-Cum-Proper Officer, Chamba Circle ROHIT CHAUHAN, MEMBER APPEAL NO. 018 OF 2019 ENDST. NO. EXN. -018/2019-AA/GST SHIMLA HP - 3159 - 64 FEBRUARY 14, 2020	Section 129, read with section 122, of the Central Goods and Services Tax Act, 2017/Section 129, read with section 122, of the Himachal Pradesh Goods and Services Tax Act, 2017 - Detention, seizure and release of goods and conveyances in transit - Competent Authority detained goods of assessee under transport on ground that vehicle No. at time of checking was PB10CT6249; whereas in E-way Bill vehicle No. was PB35Q8464 and initiated proceedings under section 129(3) - Assessee's explanation before Competent Authority was that due to break down of vehicle No. PB35Q8464 goods had been shifted to new vehicle No. PB10CT6249 and updation of new vehicle in already generated E-way Bill could not be done due to weak internet connectivity - In between assessee had also updated Part-B of E-way Bill - However, Competent Authority vide order passed under section 129(3) imposed tax and penalty upon assessee amounting to Rs. 16.28 crores - Whether since Competent Authority had passed order in a mechanical manner and had ignored corrected and updated E-way Bill as produced by assessee within two hours of detaining goods, tax and penalty imposed under section 129(3) was unsustainable - Held, yes - Whether as assessee had made procedural lapse and violated provisions of GST Act, it was liable to pay minor penalty under section 122 - Held, yes - Whether impugned order deserved to be set aside - Held, yes - Whether a penalty of Rs. 10,000 was to be imposed upon assessee under section 122 - Held, yes [Paras 8, 9 and 10] [In favour of assessee] Circulars and Notifications : Circular No. 64/38/2018 - GST, dated 14-9-2018

12	[2018] 100 taxmann.com 270 (Kerala) HIGH COURT OF KERALA Daily Express v. Assistant State Tax Officer, Thiruvananthapuram* DAMA SESHADRI NAIDU, J. WP (C) NO. 35665 OF 2018 NOVEMBER 29, 2018	Section 68, read with section 129, of the Central Goods and Services Tax Act, 2017 and rule 138 of the Central Goods and Services Tax Rules, 2017/Section 68, read with section 129, of the Kerala State Goods and Services Tax Act, 2017 and rule 138 of the Kerala State Goods and Services Tax Rules, 2017 - Search, seizure, etc. - Goods in movement, inspection of - Competent Authority had detained goods of petitioner under transport - It filed writ petition seeking appropriate directions to Competent Authority - Whether since issue involved in instant case was squarely covered in favour of petitioner by a judgment of Kerala High Court rendered in case of Sabitha Riyaz v. Union of India [2018] 100 taxmann.com 23 (Ker.), wherein Competent Authority was directed to consider assessee's request for release of detained goods in terms of Circular No. 64/38/2018-GST, dated 14-9-2018, writ petition was to be disposed of applying ration of said judgment - Held, yes [Paras 2 and 3] [In favour of assessee]
13	[2018] 98 taxmann.com 387 (Allahabad) HIGH COURT OF ALLAHABAD Rajavat Steels v. State of U.P.* ASHOK KUMAR, J. WRIT TAX NO. 1300 OF 2018 SEPTEMBER 27, 2018	Section68, read with section129, of the Central Goods and Services Tax Act, 2017 and rules 138 and 140 of the Central Goods and Services Tax Rules, 2017/Section 68, read with section129, of the Uttar Pradesh Goods and Services Tax Act, 2017 and rules 138 and 140 of the Uttar Pradesh Goods and Services Tax Rules, 2017 - Search, seizure, etc. - Goods in movement, inspection of (NR) - Competent Authority had seized goods of assessee under transport and vehicle on ground that in invoice, E-way bill and weigh slip truck number was mentioned being U.P. - 78 - DN 7983 instead of U.P. - 78 - DN 7938 - Whether since due to mistake or human error vehicle number was mentioned different, Competent Authority was to be directed to release goods and vehicle on assessee furnishing indemnity bond to extent of amount of penalty demanded - Held, yes [Para 11] [In favour of assessee]

14	2019 (12) TMI 1089 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH M/S. K.B. ENTERPRISES CHAIL CHOWK, DISTT MANDI VERSUS THE ASSISTANT COMMISSIONER STATE TAXES & EXCISE CHAMBA, HP	Levy of penalty - clerical mistake in generation of E-Way bill - minor mistakes - relied as provided vide circular - circular No 64/38/2018 and the HP circular no.12-25/2018-19-EXN-GST-(575)-6009-6026 - supply of taxable goods falling under chapter 24 of GST Tariff Act - bidis - detention order as per section 129(1) of the CGST/HPGST Act. - HELD THAT:- The circular clearly states that, in case a consignment of goods is accompanied with an invoice or any other specified document and also an e-way bill, proceedings under section 129 of the CGST Act may not be initiated in case of minor mistakes like error in one or two digits/characters of the vehicle number. Further Para 6 of the said circular states that in case of minor errors mentioned in Para 5, penalty to the tune of ₹ 500/- each under section 125 of the CGST Act and the respective HPSGST Act should be imposed (₹ 1000/- under the IGST Act) in FORM GST DRC-07 for every consignment.
15	2020 (3) TMI 722 - APPELLATE AUTHORITY, GST, HIMACHAL PRADESH MAHALAKSHMI PACKAGERS MANUFACTURE VERSUS ACST & E-CUM-PROPER OFFICER, PAONTA CIRCLE-II	Invocation of proceedings u/s 129 of the CGST/HPGST Act - vehicle number was written wrong in E-way Bill and rightly on invoice issued by the appellant - HELD THAT:- It is revealed that due to a typographic error by the consignee while issuing tax invoice and generating E-way Bill, the Vehicle No. HP-17B1790 has been mentioned instead of the Vehicle No. HP-17B-4290 on both tax invoice and as well as in E-way Bill. Apart from this there is no dispute on quantity/quality of goods in question and validity of E-way Bill.. As per the facts in hand it appears that the mistake of two digits while entering vehicle no. in invoice and E-way Bill is a typographic error and may be treated as a minor one. The said circular 64/38/2018-GST and the subsequent notification under the HPGST Act have to be followed and the benefit cannot be denied to the appellant for paltry errors of two digits in the vehicle number. The e-way bill has been duly generated and no mistake has been found in all other information entered in the EWB.

4.1) The following case laws are worth considering where in the Hon'ble courts have duly held that the ***Mere suspicion is not sufficient to invoke the provision of the confiscation. For the purpose of invoking Section 130 of the Act at the very threshold, the authorities need to make out a very strong case. They need to record their reasons for such belief in writing, and such reasons recorded in writing should, thereafter, be looked into by the superior authority so that the superior authority can take an appropriate decision whether the case is one of straightway invoking Section 130 of the Act.***

Sr. No.	Name & Citation	Particulars
1	Satyam Shivam Papers Pvt. Ltd. Vs Asst. Commissioner ST (SUPREME COURT OF INDIA) [2022] 134 taxmann.com 241 (SC)	"Inference by officer that petitioner was attempting to evade tax was baseless - The analysis and reasoning of the High Court commends to us, when it is noticed that the High Court has meticulously examined and correctly found that no fault or intent to evade tax could have been inferred against the writ petitioner. Considering department's conduct and harassment faced by taxpayer, costs of Rs. 59,000 was imposed in addition to costs of Rs. 10,000 imposed by High Court [Section 129 of Central Goods and Services Tax Act, 2017/Telangana Goods and Services Tax Act, 2017] [Paras 8 and 9] [In favour of assessee]."

2	2022 (9) TMI 786 - KARNATAKA HIGH COURT M/S. RAJEEV TRADERS VERSUS UNION OF INDIA, THE JOINT COMMISSIONER OF CENTRAL AND GST AND CENTRAL EXCISE (APPEALS) BELAGAVI, THE DEPUTY COMMISSIONER OF CENTRAL TAX, DHARWAD	HELD THAT:- The power to confiscate is the ultimate penal measure provided under the Act and is, therefore, to be exercised with great care and caution and as a last measure. This power to confiscate, given the statutory framework, is a distinct and independent power conferred under the Act which can be exercised only in cases where the power to detain and seize has not been invoked. Once the power to inspect, seize or detain the goods and conveyances is invoked either under Section 67 of the Act or under Section 129 of the Act, the power to confiscate under Section 130 would not be available. This is evident from Section 129 (6) which states that proceedings under Section 130 can be invoked only if the applicable tax and penalty are not paid despite an order being passed in that regard.
3	[2019] 112 taxmann.com 370 (Gujarat) HIGH COURT OF GUJARAT Synergy Fertichem (P.) Ltd. v. State of Gujarat*	GST: While section 129 provides for deduction, seizure and release of goods and conveyances in transit, section 130 provides for their confiscation and, thus, section 130 is not dependent to subject to section 129; for issuing notice of confiscation under section 130, mere suspicion is not sufficient and authority should make out a very strong case that assessee had definite intent to evade tax.

4	**A.P. Refinery (P.) Ltd. v. State of Uttarakhand-[2021] 130 taxmann.com 307 (Uttarakhand High Court)**	**The honorable High Court observed that** • **the department failed to prove that the opportunity of being heard was given to the assessee before the passing the orders of the confiscation in Form GST MOV-11.** • **Moreover, before invoking the provisions of Section 130 for confiscation, there should be a very strong base to proceed for confiscation. Mere suspicion is not sufficient to invoke the provision of the confiscation.** • **Therefore, it was found that order under Section 130 was not passed in accordance with law and liable to be set aside.** **The court also directed to release the vehicles and goods upon execution of a bond for the value of the goods in Form GST INS-04 and furnishing of a security in form of a bank guarantee.**
5	Siddhbali Stone Gallery v. State of Gujarat [2020] 115 taxmann.com 313 (Gujarat) HIGH COURT OF GUJARAT	The authorities concerned cannot invoke Section 130 of the Act at the threshold, i.e., at the stage of detention and seizure. What we are trying to convey is that for the purpose of invoking Section 130 of the Act at the very threshold, the authorities need to make out a very strong case. Merely on suspicion, the authorities may not be justified in invoking Section 130 of the Act straightway. If the authorities are of the view that the case is one of invoking Section 130 of the Act at the very threshold, then they need to record their reasons for such belief in writing, and such reasons recorded in writing should, thereafter, be looked into by the superior authority so that the superior authority can take an appropriate decision whether the case is one of straightway invoking Section 130 of the Act. Any opinion of the authority to be formed is not subject to objective test.

The following case laws are worth considering where in the Hon'ble courts have duly held that **where final order of confiscation of goods and conveyance of applicant was passed, however, applicant was not given any opportunity of hearing before final order came to be passed, matter needs to be remanded back or set aside so as to give an opportunity to applicant to make good his case why goods and conveyance were not liable to be confiscated under section 130 –**

Sr. No.	Name and Citation	Particulars
1.	D B Impex v. State of Gujarat [2020] 119 taxmann.com 212	Whether where final order of confiscation of goods and conveyance of applicant was passed, however, applicant was not given any opportunity of hearing before final order came to be passed, matter was to be remanded back so as to give an opportunity to applicant to make good his case why goods and conveyance were not liable to be confiscated under section 130 – Held, yes

2	HIGH COURT OF GUJARAT **MBR Flexibles Ltd.** **v.** **Deputy Commissioner of State Tax (Enforcement)** **[2022] 140 taxmann.com 214 (Gujarat)**	**GST : Order passed on same day of issuance of notice without affording an opportunity of hearing was in violation of principles of natural justice; matter was to be considered afresh** **Penalty - Personal hearing - Notice was issued directing petitioner to appear on a particular date but impugned order was passed on same date of issuance of notice - Principles of natural justice were violated as opportunity of hearing was not provided - Impugned order was to be set aside - Matter was to be reconsidered afresh [Section 129 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017] [Paras 7 and 8] [In favour of assessee]**

SR. NO.	CASE LAWS	DEALS WITH	MATTER
1	Suraj Freight Carrier(P.) Ltd. v/s State of Uttar Pradesh	Sec 129 read with Sec 169, of CGST Act 2017 and UP GST Act, 2017.	Since service of order on driver of vehicle not included in any mode of service as prescribed u/s 169. Authority has to hear the appeal.
2	Singh Traders v/s Additional Commissioner , Grade-2	Sec 169 read with Sec 129 of CGST Act, 2017 and UP GST Act, 2017.	Service of order to driver of vehicle is not assumed to be sent to representative of the petitioner.

As seen from the aforesaid **Rule 92 sub rule 3, it clearly states that any application for refund can** be rejected only after affording sufficient opportunity of hearing to the party, who seeks for refund. The appellant in the impugned order has confirmed that no hearing was afforded to the appellant. It is worth noting that principles of natural justice have not been followed in his case in as much as he was not put under notice on the ground of rejection before the claim was rejected. In this regard, the following points are worth considering.

Sr. No.	Name & Citation	Particulars
1.	[2021] 124 taxmann.com 556 (Madras) HIGH COURT OF MADRAS World Home Textiles Inc v. Additional Commissioner (Appeals), Tiruchirappalli ABDUL QUDDHOSE, J. W.P. (MD) NO. 17471 OF 2020 DECEMBER 10, 2020	GST : Where assessee filed an application before Competent Authority for refund of CGST and said Authority without affording opportunity of hearing to assessee rejected application for refund, impugned order deserved to be quashed and matter was to be remitted back to Competent Authority for fresh consideration and to pass final order on refund application after affording a fair hearing to assessee Competent Authority without affording opportunity of hearing to assessee rejected application for refund - Appellate Authority in his order dated 20-8-2020 even though confirmed that no hearing was afforded to assessee by Competent Authority and despite same dismissed appeal of assessee - Whether when rule 92(3) makes it clear that hearing is mandatory before rejecting any application for refund, Held, yes – Whether impugned orders deserved to be quashed - Held, yes - Whether matter was to be remitted back to Competent Authority for fresh consideration and to pass final order on refund application after affording a fair hearing to assessee - Held, yes [Paras 7 and 8] [In favour of assessee]

2	[2022] 142 taxmann.com 498 (Gujarat) HIGH COURT OF GUJARAT Varidhi Cotspin (P.) Ltd. v. State of Gujarat* N.V. ANJARIA AND BHARGAV D. KARIA, JJ. R/SPECIAL CIVIL APPLICATION NO. 5172 OF 2022 JULY 6, 2022	GST : Order rejecting refund claim based on ground not mentioned in show cause notice was not sustainable Application filed for refund of IGST paid on import of goods under Export Promotion Capital Goods Scheme (EPCG) was rejected - Impugned order had rejected refund claim for reason that assessee had claimed wrong input tax credit but said reason was not mentioned in show cause notice (SCN) - Since order was passed based on ground other than mentioned in SCN, opportunity to meet with ground mentioned in SCN had not been given to petitioner Impugned order was to be set aside - Department was directed to consider refund claim afresh and pass order [Section 54 of Central Goods and Services Tax Act, 2017/Gujarat Goods and Services Tax Act, 2017] [Paras 5, 6, 6.1 and 7] [Partly in favour of assessee]
3	[2023] 148 taxmann.com 462 (Jharkhand) HIGH COURT OF JHARKHAND C J DARCL Logistics Ltd. v. Union of India* APARESH KUMAR SINGH, ACJ. AND DEEPAK ROSHAN, J. W.P.(T) NO. 215 OF 2022 FEBRUARY 9, 2023	GST : Where order-in-original rejecting application for refund of tax mistakenly deposited was passed on grounds which were never part of original show cause notice and, further, petitioner's reply to show cause notice was not considered at all, principles of natural justice were violated; show cause notice and order-in-original were to be quashed HELD : Authority cannot go beyond scope of show cause notice to create new ground at later stage of adjudication - Further, neither proper show cause notice issued nor any opportunity of hearing having been given to petitioner, principles of natural justice were violated - Order- inappeal was not deliberated on this issue and simply confirmed order-in-original - Since show cause notice was vague and cryptic in nature and order-in-original passed was beyond scope of show cause notice, both were liable to be quashed and to be set aside [Section 54, read with section 17 and 49, of Central Goods and Services Tax Act, 2017/Jharkhand Goods and Services Tax Act, 2017 - Rule 92 of Central Goods and Services Tax Rules, 2017/Jharkhand Goods and Services Tax Rules, 2017] [Paras 11, 12 and 13][In favour ofassessee]

4	[2021] 125 taxmann.com 180 (Bombay) HIGH COURT OF BOMBAY BA Continuum India (P.) Ltd. v. Union of India UJJAL BHUYAN AND ABHAY AHUJA, JJ. WRIT PETITION (L) NO. 3264 OF 2020 MARCH 8, 2021	Where refund claim of petitioner-company engaged in information technology services was rejected without granting it an opportunity of being heard, order was passed in violation of proviso to rule 92(3) of CGST Rules and also in violation of principles of natural justice and matter was to be remanded to original authority for fresh decision Refund - Tax - Whether there is a clear legal mandate that if an application for refund is to be rejected, same can only be done after giving applicant an opportunity of being heard - Held, yes - Petitioner-company was engaged in business of providing information technology and information technology enabled services to customers located outside India - Petitioner-company had filed applications for refund of unutilized input tax credit on export services - Respondent-Authority by impugned order rejected petitioner's claim without giving petitioner an opportunity of being heard – Whether impugned order was in violation of proviso to rule 92(3) of CGST Rules and also in violation of principles of natural justice - Held, yes - Whether therefore, matter was to be remanded back to original authority for a fresh decision in accordance with law after giving an opportunity of being heard to petitioner - Held, yes [Paras 34.1, 37 & 40]

5	[2021] 125 taxmann.com 323 (Karnataka) HIGH COURT OF KARNATAKA Mohalla Tech (P.) Ltd. v. Union of India* B.M. SHYAM PRASAD, J. WRIT PETITION NO. 10774 OF 2020 (T/RES) OCTOBER 14, 2020	GST : Where Competent Authority vide order dated 30-5-2020 issued in Form GSTRFD- 06 rejected assessee's application for refund without affording opportunity of being heard, impugned order required to be quashed Assessee submitted before High Court that impugned order was without opportunity of being heard as contemplated under proviso to rule 92(3) - Whether provisions of proviso to rule 92(3) stipulate a right to be heard and as in instant case this right was not extended to assessee, impugned order required to be quashed - Held, yes - Whether proceedings deserved to be restored for consideration by Competent Authority in accordance with provisions of Act and Rules - Held, yes [Paras 3 and 4] [In favour of assessee]

6	[2021] 127 taxmann.com 137 (Jammu & Kashmir) HIGH COURT OF JAMMU AND KASHMIR Navneet R. Jhanwar v. State Tax Officer SANJEEV KUMAR AND SANJAY DHAR, JJ. WP(C) NO. 443 OF 2021 MARCH 17, 2021	GST : Where pursuant to show cause notice refund claim of petitioner was rejected by respondent by impugned order and grounds on which impugned order had been passed were never proposed to petitioner nor was he ever given any opportunity to explain his position, it was clear case of violation of principle of natural justice as per proviso to rule 92(3) Held, yes - Whether grounds on which impugned order had been passed were never proposed to petitioner nor was he ever given any opportunity to explain his position, it was, thus, a clear case of violation of principle of natural justice as per proviso to rule 92(3) - Held, yes - Whether impugned order was to be quashed and case was to be remanded back to revenue for passing order afresh after putting petitioner to proper show cause notice and after affording him a reasonable opportunity of being heard - Held, yes [Paras 11, 12 and 15]

7	[2023] 147 taxmann.com 152 (Bombay) HIGH COURT OF BOMBAY Adisan Laboratories (P.) Ltd. v. Union of India* NITIN JAMDAR AND GAURI GODSE, JJ. WRIT PETITION NO. 7476 OF 2022 NOVEMBER 21, 2022	GST : Notice being neither received by petitioners nor made available on GSTN portal before rejecting claim of petitioners for refund, opportunity of hearing as envisaged under rule 92 of CGST Rules, 2017 was impaired; application was to be restored Refund - Unutilized ITC - Natural justice - Notice was neither received by Petitioners nor was made available on GSTN portal before rejecting claim of petitioners for refund of Input Tax Credit accumulated as a result of inverted duty structure - HELD : Opportunity of hearing to petitioners as envisaged under rule 92 of Central Goods and Services Tax Rules, 2017 was impaired - Department was directed to follow methodology under rule 92 ibid [Section 54 of Central Goods and Services Tax Act, 2017/Maharashtra Goods and Services Tax Act, 2017/Rule 92 of Central Goods and Services Tax Rules, 2017/Maharashtra Goods and Services Tax Rules, 2017 [Paras 8 and 9] [In favour of assessee]

8	[2023] 148 taxmann.com 164 (Rajasthan) HIGH COURT OF RAJASTHAN Chandni Crafts v. Union of India* ARUN BHANSALI AND ASHOK KUMAR JAIN, JJ. D.B. CIVIL WRIT PETITION NO. 5460 OF 2020 JANUARY 17, 2023	GST : Violation of natural justice by Adjudicating Authority cannot be cured by sufficiency of natural justice in appellate authority's proceedings Refund - Natural justice - Issuance of notice in Form GST RFD-08 seeking reply prior to passing of refund orders was essential - Applicant was also to be given opportunity of hearing - In absence of same, principles of natural justice was violated by Adjudicating Authority- Order could not be affirmed by appellate authority only on account of fact that appellate authority had itself provided opportunity of hearing - Both orders were not sustainable and matter was to be remanded to Adjudicating Authority - A failure of natural justice by authority of first instance cannot be cured by sufficiency of natural justice in appellate body, as same would encourage tendency of authorities to give a short shrift to proceedings before them [Section 54 of Central Goods and Services Tax Act, 2017/Rajasthan Goods and Services Tax Act, 2017 - Rule 92 of Central Goods and Services Tax Rules, 2017/Rajasthan Goods and Services Tax Rules] [Paras 11 to 19] [In favour of assessee]

B.2) The time periods provided in Refund Rules are mandatory.

[2020] 117 taxmann.com 968 (Delhi)/[2020] 39 GSTL 385 (Delhi...

GST : Where petitioner's refund application had not been processed within time line of fifteen days, department had lost right to point out any deficiency in petitioner's refund application and accordingly, refund application would be presumed to be complete in all respects

HIGH COURT OF DELHI

JianInternational

v.

Commissioner of Delhi Goods & Services Tax*

MANMOHAN AND SANJEEV NARULA, JJ.

W.P. (C) NO. 4205 OF 2020

JULY 22, 2020

Section 54 of the Central Goods and Services Tax Act, 2017, read with rules 89 and 90 of the Central Goods and Services Tax Rules, 2017/Section 54 of the Delhi Goods and Services Tax Act, 2017, read with rules 89 and 90 of the Delhi Goods and Services Tax Rules, 2017 - Refund - Tax - Whether rule 90(2) and 90(3) of CGST/DGST Rules state that within fifteen days from date of filing of refund application, department has to either point out discrepancy/deficiency in FORM GST RFD-03 or acknowledge refund application in FORM GST RFD-02 - Held, yes - Whether where petitioner's refund application dated 4-11-2019 had not been processed, as neither any acknowledgement in FORM GST RFD-02 had been issued nor any deficiency memo had been issued in RFD-03 within time line of fifteen days, refund application would be presumed to be complete in all respects - Held, yes - Whether therefore, department had lost right to point out any deficiency in petitioner's refund application and, accordingly, department was to be directed to pay to petitioner, refund along with interest in accordance with law - Held, yes [Paras 8, 11 and 12][In favour of assessee] (NR)

SEC 108 - REVISION

Revisional Authority (RA)

- **On its own motion**
- **On information received by him**
- **On request of SGST/UTGST Commissioner**

May call for & examine all records.

Revisional Authority –
Sec 2(99) of CGST Act, 2017
Means any authority appointed or authorized for revision of decision or orders as referred to in sec 108

Revision Authority

➲ Order Passed By (N/N 5/2020)

i)	Addt. Comm/Joint Comm.	→ Principal Comm./Comm.
ii)	Asst.Comm. /D.Comm. or Superintendent	→ J.Comm/Addt.Comm

=> RA cannot revise following orders
- Order subject to appeal before AA/AT/HC/SC
- Order having period before 6 months, & after 3yrs from communication of order
- Order already taken for revision
- Revisional order

RA may pass an order on any point not raised in any appeal before AA/AT/HC/SC, before expiry of :-
*1 yr. from date of order in appeal, (or)
*3 yr. from date of initial order, whichever i later

1) Sec 108 of CGST ACT gives power to Revisional Authority to revise the order of officer subordinate to him if it is **prejudicial to interest of Revenue, erroneous, illegal or improper**
2) As per Sec. 108(2)(b) The Revisional Authority shall not exercise any power under sub-section (1), if the period specified under sub-section (2) of section 107 has not yet expired which is six months from the date of communication of the said decision.

SEC 161 – Rectification

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act,

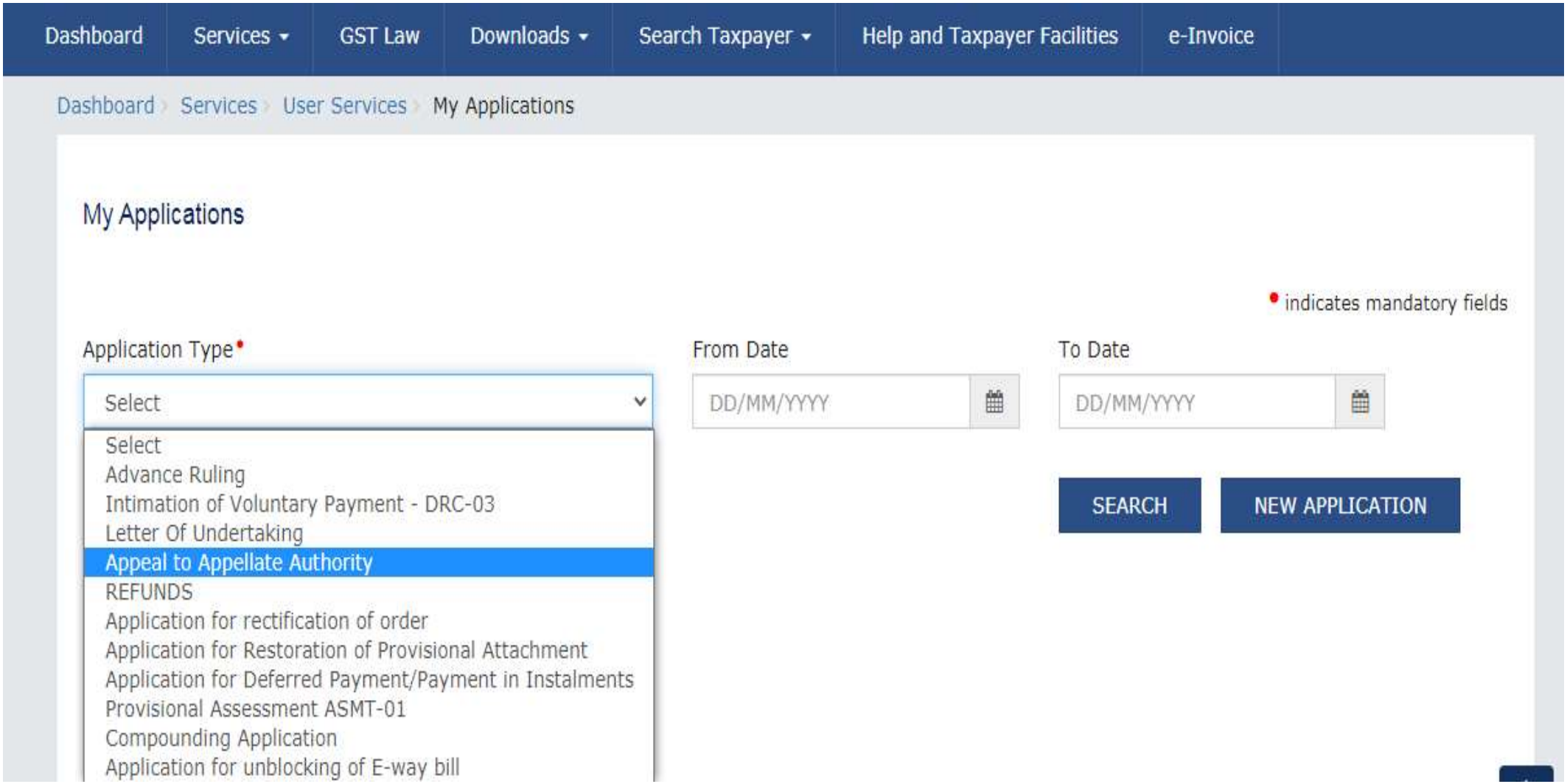
- any authority, who has passed or issued any decision or order or notice or certificate or any other document,
- **may rectify any error which is apparent on the face of record** in such decision or order or notice or certificate or any other document,
- either on its own motion or where such error is brought to its notice by any officer appointed under this Act or by the affected person
- within a period of three months from the date of issue of such decision or order or notice or certificate or any other document.

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.


Dashboard
Services
GST Law
Search Taxpayer
Help
e-Way Bill System
Registration
Ledgers
Returns
Payments
User Services
Refunds
My Saved Applications
My Applications
View/Download Certificates
View Notices and Orders
View My Submissions
Contacts
Search HSN / Service Classification Code
Holiday List
Feedback
Grievance / Complaints
Locate GST Practitioner (GSTP)
Engage / Disengage GST Practitioner (GSTP)


Dashboard
Services
GST Law
Downloads
Search Taxpayer
Help and Taxpayer Facilities
e-Invoice
Dashboard › Services › User Services › My Applications
My Applications
• indicates mandatory fields
Application Type•
Select
From Date
DD/MM/YYYY
To Date
DD/MM/YYYY
SEARCH
NEW APPLICATION
Select
Advance Ruling
Intimation of Voluntary Payment - DRC-03
Letter Of Undertaking
Appeal to Appellate Authority
REFUNDS
Application for rectification of order
Application for Restoration of Provisional Attachment
Application for Deferred Payment/Payment in Instalments
Provisional Assessment ASMT-01
Compounding Application
Application for unblocking of E-way bill


Dashboard
Services
User Services
My Applications
My Applications
indicates mandatory fields
Application Type
Appeal to Appellate Authority
From Date
DD/MM/YYYY
To Date
DD/MM/YYYY
SEARCH
NEW APPLICATION


Dashboard
Services
User Services
My Applications
New Application
English
GST APL-01:Appeal to Appellate Authority
GSTIN/Temporary ID/UIN -
Legal Name -
Trade Name -
Address -
Order Type*
Select
Order No*
SEARCH

Order Details

Order Date*
03/04/2018

Demand Id
[redacted]

Date of communication*
03/04/2018

Category of the case under dispute*
Select

ADD

Period of Dispute

From*
01/02/2018

To*
28/02/2018

Category of the case under dispute*

Select

- Select
- 1. Misclassification of any goods or services or both
- 2. Wrong applicability of a notification issued under the provisions of this Act
- 3. Incorrect determination of time and value of supply of goods or services or both
- 4. Incorrect admissibility of input tax credit of tax paid or deemed to have been paid
- 5. Incorrect determination of the liability to pay tax on any goods or services or both
- 6. Whether applicant is required to be registered
- 7. Whether any particular thing done by the applicant results in supply of goods or services or both
- 8. Rejection of application for registration on incorrect ground
- 9. Cancellation of registration for incorrect reasons
- 10. Transfer/Initiation of recovery/ Special mode of recovery
- 11. Tax wrongfully collected/Tax collected not paid to Government
- 12. Determination of tax not paid or short paid
- 13. Refund on wrong ground/Refund not granted/ Interest on delayed refund
- 14. Fraud or wilful suppression of fact
- 15. Anti profiteering related matter
- 16. Others


DISPUTED AMOUNT/ PAYMENT DETAILS
Upload Annexure to GST APL-01*
Choose File
No file chosen
Only PDF file format is allowed.
Click Here to download Annexure to GST APL-01 template.
Maximum file size for upload is 5MB.
Click Here to view the steps for converting the filled application word template to PDF file format.

DISPUTED AMOUNT/ PAYMENT DETAILS

Upload Annexure to GST APL-01*

Choose File No file chosen

- Only PDF file format is allowed.
- Click Here to download Annexure to GST APL-01 template.
- Maximum file size for upload is 5MB.
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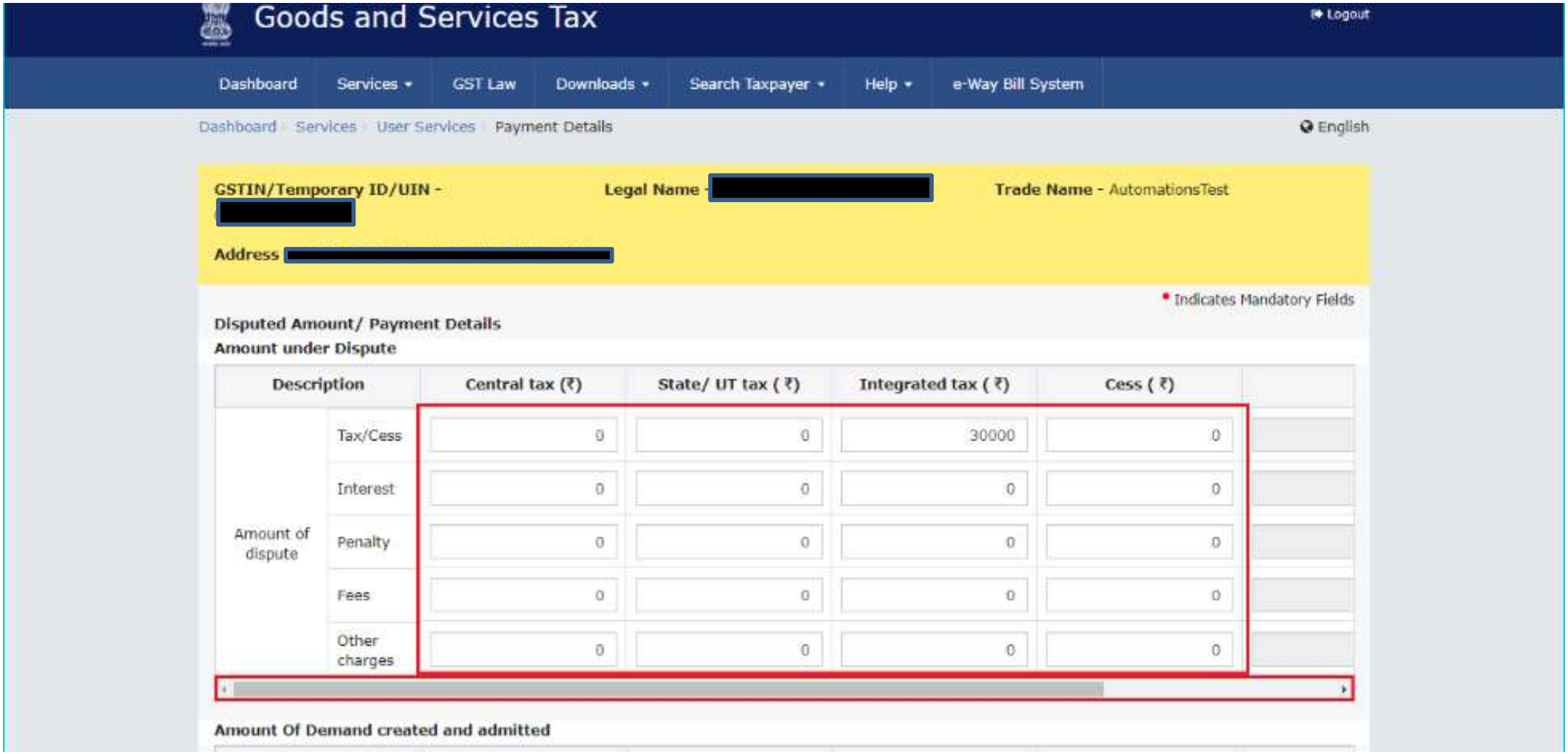

Goods and Services Tax
Logout
Dashboard
Services
GST Law
Downloads
Search Taxpayer
Help
e-Way Bill System
Dashboard / Services / User Services / Payment Details
English
GSTIN/Temporary ID/UIN -
Legal Name -
Trade Name - AutomationsTest
Address
* Indicates Mandatory Fields
Disputed Amount/ Payment Details
Amount under Dispute
Description
Central tax (₹)
State/ UT tax (₹)
Integrated tax (₹)
Cess (₹)
Amount of dispute
Tax/Cess
0
0
30000
0
Interest
0
0
0
0
Penalty
0
0
0
0
Fees
0
0
0
0
Other charges
0
0
0
0
Amount Of Demand created and admitted

Amount Of Demand created and admitted

Description		Central tax (₹)	State/ UT tax (₹)	Integrated tax (₹)	Cess (₹)	
Amount of demand created (A)	Tax/Cess	0	0	33944	0	
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other charges	0	0	0	0	
Amount of demand admitted(B)	Tax/Cess	0	0	3944	0	
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other charges	0	0	0	0	

Details of payment of admitted amount and pre-deposit

Pre-deposit % of disputed tax 10

ⓘ Minimum of 10% of the disputed amount needs to be paid as pre-deposit before filing an appeal. Lower percentage may be declared here with relevant approvals from the competent authorities.

Details of payment required

Enter Document Description

Choose File No file chosen

- Only PDF & JPEG file format is allowed.
- Maximum file size for upload is 5MB.
- Maximum 4 supporting documents can be attached in the application. The remaining documents can be handed over in hard copy
- Click on Add Document button to add the uploaded Supporting Document.

I, ANGAD JASBIRSINGH ARORA, hereby solomenly affirm and declare that the information given herein above is true and correct to the best of my / our knowledge and belief and nothing has been concealed therefrom.

Name of Authorized Signatory*

Select

Place*

Enter Place

Designation / Status

Date

05/09/2018

BACK PREVIEW PROCEED TO FILE

I, ANGAD JASBIRSINGH ARORA, hereby solomenly affirm and declare that the information given herein above is true and correct to the best of my / our knowledge and bellief and nothing has been concealed therefrom.

Name of Authorized Signatory*

ANGAD ARORA

Designation / Status

Director

Place*

Enter Place

Date

05/09/2018

BACK PREVIEW PROCEED TO FILE

COMPANY NAME

ADRESS Amritsar, Punjab, 143001

(Manufacturing Unit-1: [redacted] Road, Amritsar)

(Manufacturing Unit-2: [redacted], Amritsar)

[GSTIN:]

Appeal under section 107(1) of the CGST Act, 2017

Before

JOINT COMMISSIONER (CGST-Appeals), Jalandhar Commissionerate, Jalandhar

Against

Order No. dated20-10-2023

Passed by

Assistant Commissioner, Central Goods and Services DIV, Amritsar-II

Tax Period: 01-07-2019 to 31-07-2019

Date: 08-01-2024

To

The Joint Commissioner (Appeals),

Jalandhar Commissionerate

CGST, Jalandhar.

Sir,

In the matter of: M/s COMPNAY NAME [GSTIN:]

Sub: Appeal Petition u/s 107(1) of the CGST Act, 2017 against Order No. dated 20-10-2023; Passed by AssistantCommissioner, Central Goods and Services Tax DIV, Amritsar-II

With reference to above, we submit herewith an appeal in Form GST-01 in duplicate. The details of the documents being submitted are mentioned in the index on the next page.

Please acknowledge the receipt.

Thanking You,

Yours faithfully

For M/s Company

(Authorised Signatory)
Encl. a/a

In the matter of

M/s Company

.....APPELLANT

-Vs.-

Assistant Commissioner, Central Goods and Services DIV, Amritsar-II

.....RESPONDENT

INDEX

14.	Electricity Bill		115-118
15.	Copy of Labour Records		119-141
16.	Pollution NOC		142-159

Form GST APL -01

Appeal to Appellate Authority

1. GSTIN/Temporary ID/UIN- [redacted]
2. Legal name of the appellant- **Company**
3. Trade name, if any- **Co.**
4. Address– [redacted] **Punjab-143001**
5. OrderNo.& Order date – [redacted], **20-10-2023**
6. Designation and address of the officer Passing the order appealed against-**Assistant Commissioner, Central Goods and Services Tax DIV, Amritsar-II**
7. Date of communication of the order Appealed against-**20-10-2023**
8. Name of the authorized representative-**CA Aanchal Kapoor**
9. Details of the case under dispute-

(i) Brief issue of the case under dispute-**REFER ANNEXURE 2**

(ii) Description and classification of goods/Services in dispute– **N.A as dispute is not regarding classification**

(iii) Period of dispute-**01-07-2019 to 31-07-2019**

(iv) Amount under dispute:

Description	Central tax	State/UT tax	Integrated tax	Cess
(a) Tax/Cess	11,99,211	11,99,221	17,56,425	0
(b) Interest	0	0	0	0
(c) Penalty	0	0	0	0
(d) Fees	0	0	0	0
(e) Other charges	0	0	0	0
	11,99,221	11,99,221	17,56,425	0

(v) Market value of seizedgoods-N.A.

10. Whether the appellant wishes to be heard in person –**Yes(Through Authorized representative)**

11. Statement of facts:- **REFER ANNEXURE 1**

12. Grounds of appeal:-**REFER ANNEXURE 3**

13. Prayer:- **REFER ANNEXURE 3**

14. Amount of demand created, admitted anddisputed

Particulars of demand/ refund	Particulars		Central Tax	State/UT tax	Integrated tax	Cess	Total amount	
	Amount of demand created (A)	(a) Tax/Cess	N.A					
		(b) Interest					< total >	
		(c) Penalty					< total >	
		(d) Fees					< total >	
		(e) Other charges					< total >	
	Amount of demand admitted (B)	(a) Tax/Cess	N.A				0 total >	0
		(b) Interest					< total >	
		(c) Penalty					0	
		(d) Fees					< total >	
		(e) Other charges					< total >	
	Amount of demand	(a) Tax/Cess					**0** total >	

	disputed (C)	(b) Interest	N.A	< total >	
		(c) Penalty		< total >	
		(d) Fees		< total >	
		(e) Other charge s		< total >	

15. Details of payment of admitted amount and pre-deposit:-

(a) Details of paymentrequired

	Particulars		**Central Tax**	**State/ UT tax**	**Integrated tax**	**Cess**	**Total amount**	
	a) Admitted Amount	Tax/ Cess	N.A				< Total >	
		Interest					< Total >	
		Penalty					< Total >	
		Fees					< Total >	
		Other Charges					< total >	< total >
	b) Pre-Deposit (10% of Disputed tax/cess	Tax/Cess					< total >	

	but not Exceeding ₹ 25 crore each in respect of CGST, SGST or cess, or not exceeding ₹ 50 crore in respect of IGST and ₹ 25 crore in respect of cess)					

(b) Detailsofpaymentofadmittedamountandpre-deposit(pre-deposit10%ofthedisputedtaxandcessbutnotexceeding₹ 25croreeachinrespectof CGST, SGSTorcess,ornotexceeding₹ 50crorein respect tofIGSTand₹ 25croreinrespectof cess)

Sr. No.	Description	Tax payable	Paid through Cash/ Credit Ledger	Debit entry no.	Amount of tax paid			
					Central tax	State/UT tax	Integrated tax	CESS
1	2	3	4	5	6	7	8	9
1.	Integrated		Cash Ledger					
	Tax		Credit Ledger		N.A			
2.	Central tax		Cash Ledger					
			Credit Ledger					
3.	State/UT tax		Cash Ledger					
			Credit Ledger					
4.	CESS		Cash Ledger					
			Credit Ledger					

(c) Interest, penalty, late fee and any other amount payable andpaid

Sr.	Description	Amount payable				Debit		Amount paid		
				8						

No.		Integrated tax	Central tax	State/UT tax	CESS	entry no.	Integrated tax	Central tax	State/UT tax	CESS
1	2	3	4	5	6	7	8	9	10	11
1.	Interest	N.A								
2.	Penalty									
3.	Late fee									
4.	Others (specify)									

16.Whether appeal is being filed after the prescribed period –No

17.If 'Yes' in item 16-

(a) Period of delay- N.A

(b) Reasons for delay- N.A

18. Place of supply wise details of the integrated tax paid (admitted amount only) mentioned in the Table in sub-clause (a) of clause 15 (item (a)), if any

Place of Supply (Name of State/UT)	Demand	Tax	Interest	Penalty	Other	Total
1	2	3	4	5	6	7".
	Admitted amount [in the Table in sub-clause (a) of clause 15 (item (a))]		N.A			

Verification

j, **partner of M/s [redacted]**, hereby solemnly affirm and declare that the information given hereinabove is trueandcorrect to thebestofmyknowledgeandbeliefandnothinghasbeenconcealedtherefrom.

Place :Amritsar

Date :8th January, 2024

Name of the Appellant :

Annexure 1 to FORM GST APL-01 Appeal to Appellate Authority

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 notified1 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.

All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate 3[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].

Effect of withdrawal of Appeal

•In its recent decision of the Supreme Court for a matter pertaining to income tax **commissioner of income-tax, central-I v. Ansal Housing And construction Ltd. [2020] 116 taxmann.com 322** held that when an appeal is withdrawn due to circular the effect of the same would be dismissed as withdrawn **leaving the question of Law open.**Similar view as taken by the Bombay High court Commissioner of CGST, **ST & Central Excise vs. Cea Raj Constructions [2018] 98 taxmann.com 169.**

SUMMARY OF FORMS USED IN APPEALS

S. No.	FORM No.	CONTENT
1	GST APL-01	Appeal to Appellate Authority by Taxpayer
2	GST APL-02	Acknowledgement of submission of appeal
3	GST APL-03	Application to the Appellate Authority by Department under sub-section (2) of section 107
4	GST APL-04	Summary of the demand after the issue of order by the Appellate Authority, Tribunal or Court
5	GST APL-05	Appeal to the Appellate Tribunal
6	GST APL-06	Cross-objections before the Appellate Tribunal
7	GST APL-07	Application to the Appellate Tribunal under sub-section (3) of section 112
8	GST APL-08	Appeal to the High Court under section 117

Notices Under GST

S. No.	Notice No.	CONTENT
1.	REG-23	Show cause notice why the cancellation of GST registration must be revoked, for the reasons laid down in the notice. **Reply letter in REG-24 Within 7** working days from the date of receiving the notice Cancellation of GST Registration will be revoked
2.	GSTR-3A	Default notice to non-filers of GST returns in GSTR-1 or GSTR-3B or GSTR-4 or GSTR-8
3.	CMP-05	Questioning the eligibility to be a composition dealer Must justify reasons as to why the taxpayer should continue to be eligible for the composition scheme 15 days of receipt of the notice.
4.	REG-17	GST registration not be canceled for the reasons laid down in the notice Reply letter in REG-18 with the reasons for non-cancellation of GST registration Within 7 working days from the date of receiving the notice Cancellation of GST registration in REG-19-Section 29 is serious stuff

S. No.	Notice No.	CONTENT
5.	DRC-10 & DRC-17	Notice of Auction of Goods under section 79(1)(b) of the Act
6.	DRC-16	Notice for attachment and sale of immovable/movable goods/shares under section 79
7.	DRC-13	Notice of Recovery of outstanding tax from a third person Deposit the amount specified in the notice and reply in DRC-14

Hierarchy in GST

Stages of Appeal	Orders Passed By	Appeal To	Who Can Appeal	Section	Rule
1st	Adjudicating Authority	Appellate Authority	1. Any Aggrieved Person 2. Commissioner	107	108 ,109, 109A, 112
2nd	Appellate Authority	Appellate Tribunal	1. Any Aggrieved Person 2. Commissioner	109 To 113	110 to 111
3rd	Appellate Tribunal	High Court/ Supreme Court	1. Any Aggrieved Person	117	114
4th	High Court	Supreme Court	Any Aggrieved Person	118	-

Amnesty Scheme for filling Appeals

(Notification No. 53/2023– CT Dated 2nd Nov, 2023)
(52nd GST Council Meeting decisions)

Amnesty Scheme for filing of appeals against demand orders in cases where appeal could not be filed within the allowable time period:

Sect 129 ,130 orers not covered

The Council has recommended providing amnesty scheme through a special procedure under section 148 of CGST Act, 2017 for taxable persons, who could not file an appeal under section 107 of the said Act, against the demand order under section 73 or 74 of CGST Act, 2017 passed on or before the 31st day of March, 2023, or whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in sub-section (1) of section 107.

Not considered on merits

In all such cases, filing of appeal by the taxpayers will be allowed against such orders upto 31st January 2024,

Pre-deposit: Appeals are conditional upon the appellant having paid in full the admitted amount of tax, interest, fines, fees, and penalties, and **12.5% of the remaining disputed tax** (instead of 10%), up to a maximum of ₹25 crore. Of this, at least 20% (2.5% of the disputed tax) must be from the Electronic Cash Ledger.

This will facilitate a large number of taxpayers, who could not file appeal in the past within the specified time period.

ANALYSIS

- **CUTOFF DATE FOR ORDERS** :- For those taxable persons who could not file appeal under section 107 against orders issued up to 31.03.2023 by proper officer under section 73 or 74 of CGST Rules, 2017.

- **CASES COVERED:**
  - Taxable persons who could not file an appeal within the time period specified in sub-section (1) of section 107 read with sub-section (4) of section 107 of the said Act.
  - Taxable persons whose appeal against the said order was rejected solely on the grounds that the said appeal was not filed within the time period specified in section 107.
- **FORM:** Appeal shall be filed in Form GST APL-01 in terms of section 107(1) on or before 31st January, 2024.

- **RULES**: The provisions of Chapter XIII of the Central Goods and Service Tax Rules, 2017 (12 of 2017), shall mutatis mutandis, apply to an appeal filed under this notification.

- The benefit of Notification does not apply to Appeals against penalties imposed u/s 129 (e-way bill orders) or cancellation of registration orders.

- Amnesty scheme is applicable only for first appeal to Appellate Authority under section 107 of CGST Act, 2017 and not for any other appeal or appeal before Appellate Tribunal.

- Appeals under Amnesty Scheme **are time specific** and only those orders which have been issued on or before 31st March, 2023 will be covered.

- **PRE-DEPOSITS:**
  - **Demands Admitted** – 100% of the amount of tax, interest, fine, fee and penalty arising from the impugned order.
  - **Demands Disputed** – 12.5% of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, out of which at least twenty five percent should have been paid by debiting from the Electronic CashLedger. (20% out 12.5% of tax disputed)

Illustration	
Disputed demand of tax	1000
Pre deposit required 12.5%	125
Out of the above required Pre deposit , Payment from cash ledger 20% of the pre deposit (20% of Rs.125)	25

- Electronic Credit Ledger cannot be used for payment of additional 2.5% deposit and it has to be deposited by way of cash.

- In many cases the appeal may have been filed paying only 10% of the disputed tax amount which was ordinary required under section 107(6), to ratify or to regularize those case under the current notification the appellant are required to pay additionally 2.5% pre deposit from the electronic cash ledger.

- The 10% pre-deposit already paid, if any, prior to the issuance of the Notification should be allowed to be adjusted while filing Appeal under the instant Notification. There is no explicit bar under the Notification.

- Orders to be eligible for scheme must be issued only under section 73 or 74 of CGST Act, 2017.

- If the order is issued on before 31st March, 2023 but received by taxable person after 31.03.2023, then such orders may also be eligible for Amnesty Scheme

- Appeal can not be filed 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 12.5% of the remaining amount of tax in dispute arising from the said order, subject to a maximum of 25 crore rupees, in relation to which the appeal has been filed, out of which at least 20% should have been paid by debiting from the Electronic Cash Ledger.

- **CASES NOT COVERED:** Appeals under the scheme shall be admissible only where demand is of tax i.e., where dispute is only of interest, penalty etc., scheme can not be availed.

- **NO REFUND OF EXCESS PAYMENT OF PRE-DEPOSIT**: No refund shall be granted on account of this notification till the disposal of the appeal, in respect of any amount paid by the appellant, either on their own or on the directions of any authority (or) court, in excess of the amount specified in para 3 (12.5%) of this notification before the issuance of this notification, for filing an appeal under subsection (1) of Section 107 of the said Act.

Case Laws

Nexus Motors Private Limited A Private Limited Vs. State of Bihar (Patna High Court)
Appeal Number : Civil Writ Jurisdiction Case No. 16523 of 2023 Dated 30/11/2023
Has ruled in favor of granting the benefit of GST amnesty beyond the specified cut-off date mentioned in Notification No. 53/2023-Central Tax. The court set aside an order dismissing an appeal due to a delay of five days.
High Court held that Benefit of amnesty provided under Notification No. 53/2023-Central Tax would be available in case of appeal filed against order passed at least three months prior to date of issuance i.e., 2-11-2023; fixing cut-off date of 31-3-2023 by notification was not proper

Cholaa Tapes *v.* Deputy Commissioner of GST & Central Excise [2023] 157 taxmann.com 480 (Madras) HIGH COURT OF MADRAS
Appeal - Condonation of delay - Amnesty Scheme - Petitioner's appeal was rejected by Appellate Authority on account of delay of 158 days in filing - Petitioner vide instant writ petition contended that appeal was filed with a delay of 22 days, thus Appellate Authority should have condoned delay - Revenue, on other hand, submitted that appeal was not filed with delay of 22 days, but it was filed with delay of 158 days and delay period was to be computed from date of service of original order and not from date of service of recovery notice - Held : Even after rejection of appeal on aspect of delay, petitioner could very well avail Amnesty scheme, thus in such view of matter, petitioner was to be directed to avail Amnesty scheme in terms of Notification No.53/2023-Central Tax dated 2-11-2023 and respondent authority was to be directed to consider same in accordance with law [Section 107 of Central Goods and Services Tax Act, 2017/Tamil Nadu Goods and Services Tax Act, 2017] [Para 11] [In favour of revenue]

Micro Zone *v.* Union of India [2023] 157 taxmann.com 574 (Patna) HIGH COURT OF PATNA

Where appeal filed by assessee challenging order passed by proper officer was dismissed by first Appellate Authority on ground that same was time barred, however, time for filing appeal against an order passed by proper officer had been extended by Central Board of Indirect Taxes and Customs by Notification No. 53/2023-Central Tax, dated 2-11-2023, such appeal was to be restored to file of Appellate Authority subject to conditions of said notification being satisfied

Assessee had filed a delayed appeal which was said to have been rejected for reason of not been filed within period of limitation - Section107 of BGST Act provides for three months time - Assessee even failed to file appeal in extended period of one month provided under section107 of BGST Act - Central Board of Indirect Taxes and Customs has by Notification No. 53 of 2023-CT extended time for filing appeal against an order passed by Proper Officer on or before 31-3-2023 under sections 73 and 74 of BGST Act - This in fact extends period for filing a delayed appeal beyond one month period as provided under section107(4) of BGST Act - Instant writ petition was filed - [In favour of assessee]

Modern Steel *v.* Additional Commissioner [2023] 156 taxmann.com 452 (Allahabad) HIGH COURT OF ALLAHABAD

Where appeal against order passed by revenue was rejected on ground of delay, since, GST Council in 52nd meeting had extended period of limitation for filing appeal against order passed under section 74 till 31-1-2024 under amnesty scheme, said appellate order was to be set aside.

EXTENSION OF TIME LIMITS FOR FILING APPEALS AGAINST ORDER UNDER SECTION 129 & 130 OF CGST ACT, SIMILAR TO EXTENSION GRANTED FOR SECTION 73 & 74.

CITATION: *[2024] 163 taxmann.com 306 (Allahabad) HIGH COURT OF ALLAHABAD Tenet Networks (P.) Ltd. v. GST Council* SHEKHAR B. SARAF, J. WRIT TAX NO. 361 OF 2024 MARCH 13, 2024*

Extension of time limit for filing appeals – Writ of Mandamus - Notification issued extending time limit for filing appeals against orders under Sections 73 and 74 of CGST Act - No extension granted for appeals against orders under Sections 129 and 130 - Writ petition filed contending it is discriminatory to exclude orders under Sections 129 and 130 - HELD: Directed GST Council and CBIC to consider extending time limit notification to cover orders under Sections 129 and 130 as well - Court cannot issue mandamus directing Government to include specific provisions in notification - However, Government can consider extending benefit to orders under Sections 129 and 130 at earliest to avoid discrimination - Matter adjourned sine die with liberty to mention [Sections 73, 74, 107, 129 and 130 of Central Goods and Services Tax Act, 2017/ Uttar Pradesh Goods and Services Tax Act, 2017][Paras 4 and 5][In favour of assessee]

ORDER

Upon due consideration, I am of the view that this Court is not in a position to issue a writ of mandamus directing the Central Government to include Sections 129 and 130 of the Act in the said notification. However, I am of the view that the Government can very well consider adding these two Sections in the said notification, so that the benefit that has been provided for the orders passed under Sections 73 and 74 of the Act can be extended to Sections 129 and 130 of the Act.

In the light of the above, GST council and the Central Board of Indirect Taxes, Ministry of Finance, is directed to look into this aspect of the matter at the earliest. 6. The matter is adjourned sine die with liberty granted to the counsel appearing on behalf of the petitioner to mention the same at the appropriate time.

In the meantime, affidavits be exchanged between the parties. 8. Counsel appearing on behalf of the petitioner is directed to inform about this order in the office of the learned A.S.G.I.

**In favour of assessee.*

Applicability of provisions of section 75(2)

Circular No. 185/17/2022-GST

Dated 27th December,2022

1. Notice issued by proper officer u/s 74(1)

2. Notice is not sustainable for reason .(i.e. charge of fraud/wilful-misstatement/suppression; have not been established against the person)

3. Proper officer shall determine Tax Payable u/s 73(1)

Doubts

- Time Limit within which the Proper Officer required to re – determine the amount of Tax Payable u/s73(1)
- Methodology for computation of such Amount Payable .

Issue 1.

What would be the <u>Time Period for Re-determination</u> of the tax, interest and penalty payable by the noticee in such cases?

Clarification

<u>Section 75(3)</u>
Order required to be issued

→ Within 2 Years

→ From the date of communication of the said direction.

↓ **In Case Direction Issued by**

- **The Appellate Authority**
- **Appellate tribunal or Court**

↓

To Re-determine the amount of tax payable by the noticee by deeming the notice to have been issued u/s73(1) with the provision of section 75(2)

← **With the provision of <u>Section 75(2)</u>**

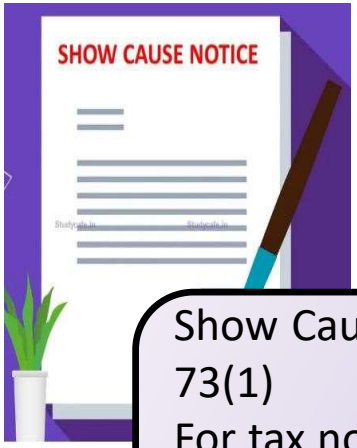
Proper officer is required to issue the order of redetermination of tax, interest and penalty payable within the time limit as specified in u/s 75(3) , i.e. 2 years from the date of communication of the said direction

Issue 2.

How the <u>Amount Payable</u> by the Noticee <u>Re-computed/ Re-determined</u> by the Proper officer as per provisions of sub-section (2) of section 75?

Clarification

The demand would have to be **Re-determined keeping in consideration the provisions of sub-section (2) of section 73, read with sub-section (10) of section 73 of CGST Act.**



Show Cause Notice issued u/s 73(1)
For tax not paid, or Short Paid ,erroneously refunded **(Not involve fraud or willful misstatement)**

<u>Section 73(2)</u>
Such show cause notice shall be issued **At least 3 months Prior** to the time limit specified in ***section 73(10) for issuance of order**

*** <u>Section 73 (10)</u>**
3 years from the due date for furnishing of annual return for the Financial year

CRUX:

The show cause notice issued within <u>2 years and 9 months</u> from the due date of furnishing of Annual Return or date of erroneous refund.

SCN U/S 74(1) was issued within 2 years & 9 months from due date of furnishing of annual return or date of erroneous refund, as the case may be.

Redetermination of liability

the entire amount of the said demand in the show cause notice would be covered under redetermined amount.

SCN U/S 74(1) was issued beyond 2 years & 9 months from due date of furnishing of annual return or date of erroneous refund, as the case may be.

Demand has to be dropped

Redetermination of liability

If SCN U/S 74(1) issued for multiple FYs – Each year to be considered separate

THANK YOU

Disclaimer The views expressed are solely of the author and the content of this document is solely for information purpose and not to be construed as a professional advice. In cases where the reader has any legal issues, he/she must in all cases seek independent legal advice.

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