



**SALES TAX BAR ASSOCIATION (REGD.)**



# Goods & Services Tax

*Central Goods & Services Tax Act, 2017*

***“Appeals & Revision under GST”***

**Sales Tax Bar Association (Regd.),  
New Delhi**

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# Appeal under **GST**



## Appeals & Revision

CA Rohit Vaswani

# Appeal under VAT Vs GST

Objections: Sec.74 of DVAT Act, 2004

- Any person who is dis-satisfied with -
- (a) an assessment made under this Act (including an assessment under section 33 of this Act); or (b) any other order or decision made under this Act; may make an objection against such assessment, or order or decision, as the case may be, to the Commissioner:

Appeal to CCE(Appeals): Sec.85 of Chapter V of Finance Act, 1994

- Any person aggrieved by any decision or order passed by an adjudicating authority subordinate to the <sup>5</sup>[Principal Commissioner of Central Excise or] Commissioner of Central Excise may appeal to the Commissioner of Central Excise (Appeals).

Appeals to Appellate Authority: Sec.107 of CGST Act, 2017

- 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.

# Power to 'Review' under VAT Vs GST

Review:  
Sec.74B(5) of  
DVAT Act, 2004

- (5) Save as provided in the foregoing sub-sections, and subject to such rules as may be prescribed, any assessment or re-assessment made or order passed under this Act or the rules made thereunder by any person appointed under section 66 **may be reviewed by such person suo motu or upon an application made in that behalf.**

Service  
Tax/Excise Law

- No power to 'Review' by the same authority.

GST Law

- No power to 'Review' by the same authority.

# Appeals and Revision

- Section  
107-121

CGST Act,  
2017



- Rule  
108-116

CGST Rules,  
2017



# Appeals & Revision (Sec.107-121)

First Appeal to  
Appellate  
Authority

Revision by  
Revisional  
Authority

Second Appeal  
to Appellate  
Tribunal

Appeal to High  
Court

Appeal to  
Supreme Court

# Where to File Appeal?

- Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances.
- CGST Act, 2017
- Section 6 (3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act **shall not lie before an officer appointed under the State Goods and Services Tax Act** or the Union Territory Goods and Services Tax Act.
- Delhi GST Act, 2017
- Section 6 (3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, **shall not lie before an officer appointed under the Central Goods and Services Tax Act.**

# Where to File Appeal?

Any decision or order passed by the Adjudicating Authority of CGST

- Appeal to be filed with Central GST Appellate Authority

Any decision or order passed by the Adjudicating Authority of SGST

- Appeal to be filed with State GST Appellate Authority



# Bar on jurisdiction of civil courts.

- CGST Act, 2017
- **Section 162.** Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

# What is Appealable under GST?

- Appeals to Appellate Authority.
- **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.

# Adjudicating Authority

## Sec. 2 (4) of CGST Act, 2017

- Sec. 2 (4) “adjudicating authority” means
- any authority, appointed or authorised to pass any order or decision under this Act,
- **but does not include**
- the Commissioner,
- Revisional Authority,
- the Authority for Advance Ruling,
- the Appellate Authority for Advance Ruling,
- the Appellate Authority and
- the Appellate Tribunal;

# 'Decision' or 'Order'- Examples

Adjudication Order u/s  
73(9)

Adjudication Order u/s  
74(9)

Best Judgement  
Assessment of non-filers  
of returns u/s 62

Order of Provisional  
Assessment u/s 60

Summary Assessment  
u/s 64


Best Judgement  
Assessment of  
unregistered persons  
u/s 63

Goods Detention  
Order/ Goods Release  
Order u/s 129

Cancellation or  
suspension of  
registration u/s 29

Rejection of application  
for revocation of  
cancellation of  
registration u/s 30

# Who can file Appeal under GST ?



Any person aggrieved by  
any decision or order  
passed

The Commissioner may,  
on his own motion, or  
upon request from the  
Commissioner of State  
tax/UT tax

# Non-Appealable Decisions and Orders

## Sec.121

No appeal shall lie against any decision taken or order passed in case of following matters-

An order 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 (Payment of tax due in instalment)

# Appeal Not to be Filed in Certain Cases

Sec.120

Fixing of monetary limits for regulating appeals by the Board

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

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

# Monetary limits for filing appeal by department under Excise and Service Tax

- Appeal before Appellate Tribunal- if duty involved is 20 Lakhs or more,
- Appeal before High Court- if duty involved is 50 Lakhs or more,
- Appeal or SLP before Supreme Court- if duty involved is 1 crore or more.





**“First Appeal to Appellate Authority”**

**CA Rohit Vaswani**

# First Appeal To Appellate Authority

## Sec.107/Rule.108

“Appellate Authority”  
Sec.2(8)

- means an authority appointed or authorised to hear appeals as referred to in section 107

Appealable Orders

- any decision or order passed under this Act or SGST/UTGST by an adjudicating authority

Time Limit for filing Appeal

- Within 3+1 months from the date on which the said decision or order is communicated.

# Time Limit for Appeal under VAT Vs GST

Objections: Sec.74 of DVAT Act, 2004

- Within 2 months of the date of service of the assessment, or order or decision, as the case may be. Further 2 Months with Condonation.

Appeal to CCE(Appeals): Sec.85 of Chapter V of Finance Act, 1994

- Within 2 months from the date of receipt of the decision or order of such adjudicating authority. Further 1 Month with Condonation.

Appeals to Appellate Authority: Sec.107 of CGST Act, 2017

- Within 3 months from the date on which the said decision or order is communicated to such person. Further 1 Month with Condonation.

# Service of notice in certain circumstances.

## Sec.169

- **169.** (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:-
- (a) *by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or*
- (b) *by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or*
- (c) *by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or*
- (d) *by making it available on the common portal; or*
- (e) *by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or*
- (f) *if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.*

# First Appeal To Appellate Authority

## Sec.107/Rule.108

Who will file  
the appeal

- Any person aggrieved by any decision or order passed by an adjudicating authority

Form for  
filing  
Appeal

- Appeal shall be filed in FORM GST APL-01 along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner.

# First Appeal To Appellate Authority

## Sec.107/Rule.108

Provisional  
Acknowledgement

- To be issued at the time of filing of appeal
- Certified copy of the order to be submitted within 7 days

Final  
Acknowledgement

- To be issued after submission of Certified copy of the decision or order appealed against

# First Appeal To Appellate Authority Sec.107/Rule.108

Date of filing of “Appeal”

If certified copy submitted within 7 days, date of filing will be date of provisional acknowledgement

If certified copy NOT submitted within 7 days, than date of filing will be date of submission of certified copy

# First Appeal/Application by the Department

## Sec.107/Rule.109

Commissioner may on his own motion or on request from State/UT

- for the purpose of satisfying himself as to the legality or propriety of the said decision or order

Commissioner may, by order, direct any officer subordinate to him

- To apply to the Appellate Authority within 6+1 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



# First Appeal/Application by the Department

## Sec.107/Rule.109

Application by  
Authorized  
Officer to be  
treated as Appeal

- 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

Form of  
filing  
application

- An application to the Appellate Authority shall be made in FORM GST APL-03 and certified copy to be filed within 7 days. An appeal number shall be generated by the appellate authority

# Appointment of Appellant Authority

## Rule.109A

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

- Where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent

Commissioner (Appeals)

- Where such decision or order is passed by the Additional or Joint Commissioner

# Pre-Condition for filing of Appeal

## Sec.107(6)

100% of  
Admitted  
Demand

- No appeal shall be filed unless the appellant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him

10% of the  
remaining  
amount of tax  
in Dispute

- a sum equal to 10% of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed (subject to maximum of 25 crore rupees under each act)

# Pre-Condition for filing of Appeal

## Sec.107(6)

- (6) No appeal shall be filed under sub-section (1), unless the appellant has paid-
- *(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and*
- *(b) a sum equal to ten per cent. 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.*

# Stay of Demand

## Sec.107(7)/(8)

### Automatic Stay

- Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed

### Opportunity of being heard

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

# Adjournment of hearing

## Sec.107(9)

Adjournments  
to be allowed on  
sufficient cause

- 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

Maximum 3  
adjournments  
allowed to a  
party

- Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal

# Additional Grounds of Appeal & Power to pass Order

## Sec.107(10)/(11)

### Additional Grounds of 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

### Power to pass Order

- To 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

# Power to enhance or demand

(Opportunity of being Heard)

**Sec.107(11)**

Power to  
Enhance

- 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

Power to  
Adjudicate  
Demand

- any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised. Within time limits as per sec.73 & 74



# Procedure in Appeal

## Sec.107(12)/(13)

### Speaking Order

- Shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision

### Time Limit for passing Order

- The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of 1 year from the date on which it is filed (period of stay shall be excluded)

# Procedure in Appeal

## Sec.107(14)/(15)/(16)

Communication  
of the Order

- Shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority

Copy of Order to  
jurisdictional  
commissioner

- A copy of the order shall also be sent to the jurisdictional commissioner and jurisdictional commissioner of state/UT

Appeal Order  
shall be final &  
binding

- 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

# Production of additional evidence before the Appellate Authority or the Appellate Tribunal

## Rule-112

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

(a) where the adjudicating authority or, as the case may be, the **Appellate Authority has refused to admit evidence** which ought to have been admitted; or

b) where the appellant was **prevented by sufficient cause from producing the evidence which he was called upon** to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) where the appellant was **prevented by sufficient cause** from producing before the adjudicating authority or, as the case may be, the Appellate Authority **any evidence which is relevant to any ground of appeal;**  
or

(d) where the adjudicating authority or, as the case may be, 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.

# Production of additional evidence before the Appellate Authority or the Appellate Tribunal

## Rule-112

### Admission of evidence

- 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.

### Opportunity to 'Adjudicating Authority' mandatory

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

### Power to call for any document or examination of any witness

- 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.

# Interest on refund of amount paid for admission of appeal.

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

# ReVISIONION

“Powers of Revisional Authority”

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# Powers of Revisional Authority.

## Se.108

Who can exercise the power of revision

- Subject to the provisions of section 121 and any rules made thereunder, the **Revisional Authority** may, on his own motion, or upon information received by him or on request from the Commissioner of State tax/UT tax.

‘Revisional Authority’

- Sec. 2 (99) “Revisional Authority” means an authority appointed or authorised for revision of decision or orders as referred to in section 108;

# Powers of Revisional Authority.

## Se.108

When can power of revision be exercised ?

Revisional Authority may, **call for and examine the record of any proceedings**, and if he considers that any decision or order passed under this Act or under the SGST Act or the UTGST Act by any officer subordinate to him

is erroneous in so far as **it is prejudicial to the interest of revenue** and is illegal or improper

or **has not taken into account certain material facts**, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India



# Powers of Revisional Authority.

Se.108

## Powers of Revisional Authority

he may, if necessary, stay the operation of such decision or order for such period as he deems fit

and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary,

pass such order, as he thinks just and proper, including **enhancing or modifying or annulling** the said decision or order.

# Notice to person and order of revisional authority in case of revision: Rule-109B

- **109B. Notice to person and order of revisional authority in case of revision. –**
- (1) Where the Revisional Authority decides to pass an order in revision under section 108 which is likely to affect the person adversely, the Revisional Authority shall serve on him a notice in **FORM GST RVN-01** and shall give him a reasonable opportunity of being heard.
- (2) The Revisional Authority shall, along with its order under sub-section (1) of section 108, issue a summary of the order in **FORM GST APL-04** clearly indicating the final amount of demand confirmed.

# Powers of Revisional Authority.

## Se.108

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

*(a) the order has been subject to an appeal under section 107 or section 112 or section 117 or section 118; or*

*(b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised;*  
or

*(c) the order has already been taken for revision under this section at an earlier stage;*  
or

*(d) the order has been passed in exercise of the powers under sub-section (1):*

# Powers of Revisional Authority.

## Se.108

Every order passed be final and binding on parties

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

Time Limit to exclude the period of Appeal in High Court or Supreme Court in other proceedings

- If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision **in some other proceedings** and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, than the period in decision to be excluded for limitation under this section.

# Powers of Revisional Authority.

## Se.108

‘Stay’ period to be excluded from limitation period.

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

For the purposes of this section, the term,—

- (i) “**record**” shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority;
- (ii) “**decision**” shall include intimation given by any officer lower in rank than the Revisional Authority.

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*Thank You*

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