



Lawgics

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Section 107(6) to 107(16) of CGST Act, 2017 read with Rule 112 & 113

Section 107(6)	<p>No appeal shall be filed under sub-section (1), unless the appellant has paid—</p> <p>(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</p> <p>(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.</p> <p>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.</p>
Section 107(6) Interpretation	<p><u>Payment of Pre-deposit before filing appeal</u></p> <p>Appeal can be filed in APL-01 upon payment of:</p> <ul style="list-style-type: none">— Amount of tax, interest, fine, fee & penalty, as is admitted in full; and— pre-deposit of sum equal to 10% of remaining amount of TAX in dispute subject to a maximum of 25 crore rupees. This maximum limit has been inserted vide Notification No.2/2019-CT dt. 29-01-2019 and is effective from 01.02.2019. There is no need to pre-deposit any percentage of disputed interest, fine, fee & penalty. <p>It has been provided that in respect of goods/conveyances seized in transit, pre-deposit of a sum equal to 25% of the penalty imposed shall be paid w.e.f.01.01.2022 vide Notification No. 39/2021-CT, dated 21-12-2021.</p> <p>Use of ITC for payment of pre-deposit under GST remains a Controversy. With contrary decisions of the Bombay High Court, Allahabad High Court and Orissa High Court coupled with the GST Circular No. 172/04/2022-GST dated 6th July 2022, the taxpayers still don't have clarity, if they may proceed to use Electronic Credit Ledger balance to pay the mandatory pre-deposit. While ITC is equivalent to tax paid, the rationale to disallow its usage for payment of pre-deposit for maintaining an appeal seems harsh.</p> <p>Thus, adopting a lenient view it is concluded that the pre-deposit can be paid by debiting Electronic Cash Ledger as well as Electronic Credit Ledger.</p>
Section 107(7)	<p>Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.</p>
Section 107(7) Interpretation	<p><u>Deemed Stay of demand</u></p> <p>On payment of above amount as discussed in Section 107(6), the recovery proceedings for balance amount are deemed to be stayed.</p>

Section 107(8)	The Appellate Authority shall give an opportunity to the appellant of being heard.
Section 107(8) Interpretation	<u>Opportunity of hearing</u> The Appellate Authority shall give an opportunity of being heard to the appellant. The principles of natural justice ought to be followed.
Section 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.
Section 107(9) Interpretation	<u>Adjournment of hearing but not more than 3 times</u> The hearing of an appeal may be adjourned for reasons to be recorded in writing to grant time to the parties or any of them. However, Maximum 3 adjournments shall be granted to a party on showing reasonable cause that is to be recorded in writing.
Section 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 112 – Production of additional evidence before the Appellate Authority or the Appellate Tribunal

(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.

(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 –

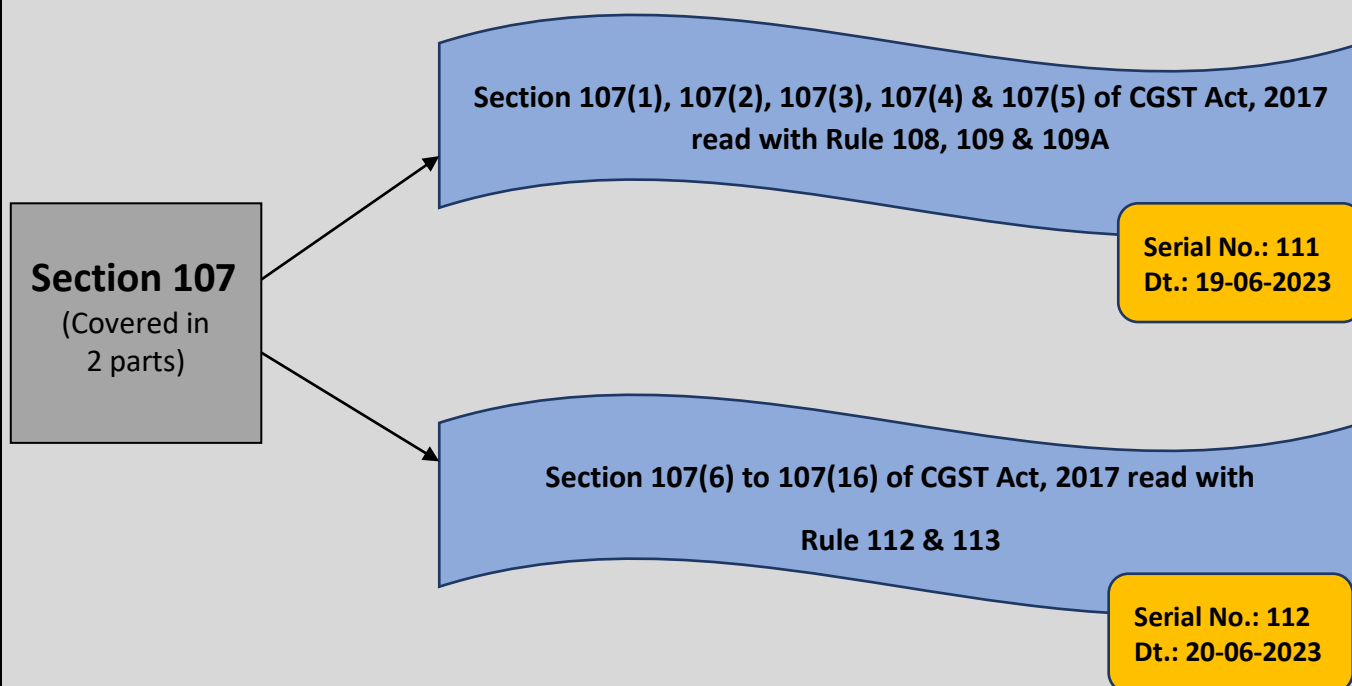
- (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
- (b) to produce any evidence or any witness in rebuttal of evidence produced by appellant under sub-rule (1).

(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.

Section 107(10) read with Rule 112 Interpretation	<u>Provision for Additional Grounds</u> The Appellate Authority has been bestowed with power to allow an appellant to add any ground of appeal not specified in the grounds of appeal. However, such addition of grounds shall be allowed only if the Appellate Authority is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.
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	<p>As per Rule 112 of the CGST Rules, the appellant shall not be allowed to produce any additional evidence at the appellate stage unless:</p> <ul style="list-style-type: none"> the adjudicating authority refused to admit such evidence, or the appellant was prevented by sufficient cause to produce the evidence at the adjudication stage, or the appellant was not given sufficient opportunity at the adjudication stage. <p>Though this provision is in Rules and not in the Act itself, the taxpayers must be cautious while pleading the case at the adjudication stage to ensure proper submission of evidences.</p> <p>Any evidence shall be admitted by the Appellate Authority only after recording the reasons for its admission in writing.</p>
Section 107(11)	<p>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:</p> <p>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:</p> <p>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.</p>
Section 107(12)	<p>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.</p>
Section 107(11) & 107(12) Interpretation	<p><u>Disposal of Appeal</u></p> <p>The Appellate Authority may pass such an order as it thinks just and proper. The Appellate Authority has to pass the order confirming, modifying or annulling the decision or order appealed against, but shall not remand the case back to the adjudicating authority.</p> <p>The Opportunity of being heard is to be granted in case of order for enhancing fees or penalty or fine in lieu of confiscation of goods or reducing amount of refund/input tax credit after issuing show cause notice.</p> <p>The appellate authority has power to issue show cause notice against the proposed order and the order is passed within the time limit specified under section 73 or section 74, it is of the opinion that any tax has not been paid or short paid or erroneously refunded or input tax credit is wrongly availed or utilised.</p> <p>The order of the Appellate Authority disposing of the appeal shall be in writing and shall state:</p> <ul style="list-style-type: none"> the points for determination, the decision thereon, and the reasons for such decision
Section 107(13)	<p>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:</p> <p>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.</p>
Section 107(13) Interpretation	<p><u>Time limit to dispose the Appeal</u></p> <p>The Appellate authority has to hear and decide the appeal, wherever possible, within 1 year</p>

	<p>from the date of filing.</p> <p>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 1 year.</p>
Section 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.
Section 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.
Rule 113 – Order of Appellate Authority or Appellate Tribunal	
<p>(1) The Appellate Authority shall, along with its order under sub-section (11) of section 107, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.</p> <p>(2) The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.</p>	
Section 107(14) & 107(15) read with Rule 113 Interpretation	<p><u>Communication of orders</u></p> <p>The Appellate Authority shall communicate the copy of order to the appellant, the respondent, the adjudicating authority, Jurisdictional Commissioner of CGST, SGST and UTGST or an authority designated in their behalf.</p> <p>The Appellate Authority shall also issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.</p>
Section 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.
Section 107(16) Interpretation	<p><u>Binding effect of Order of Appellate Authority</u></p> <p>The order passed under this section shall be final and binding on the parties subject to provisions of section 108 (Powers of Revisional Authority) or Section 113 (Orders of Appellate Tribunal) or Section 117 (Appeal to High Court).</p>



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