



APPEAL UNDER GST

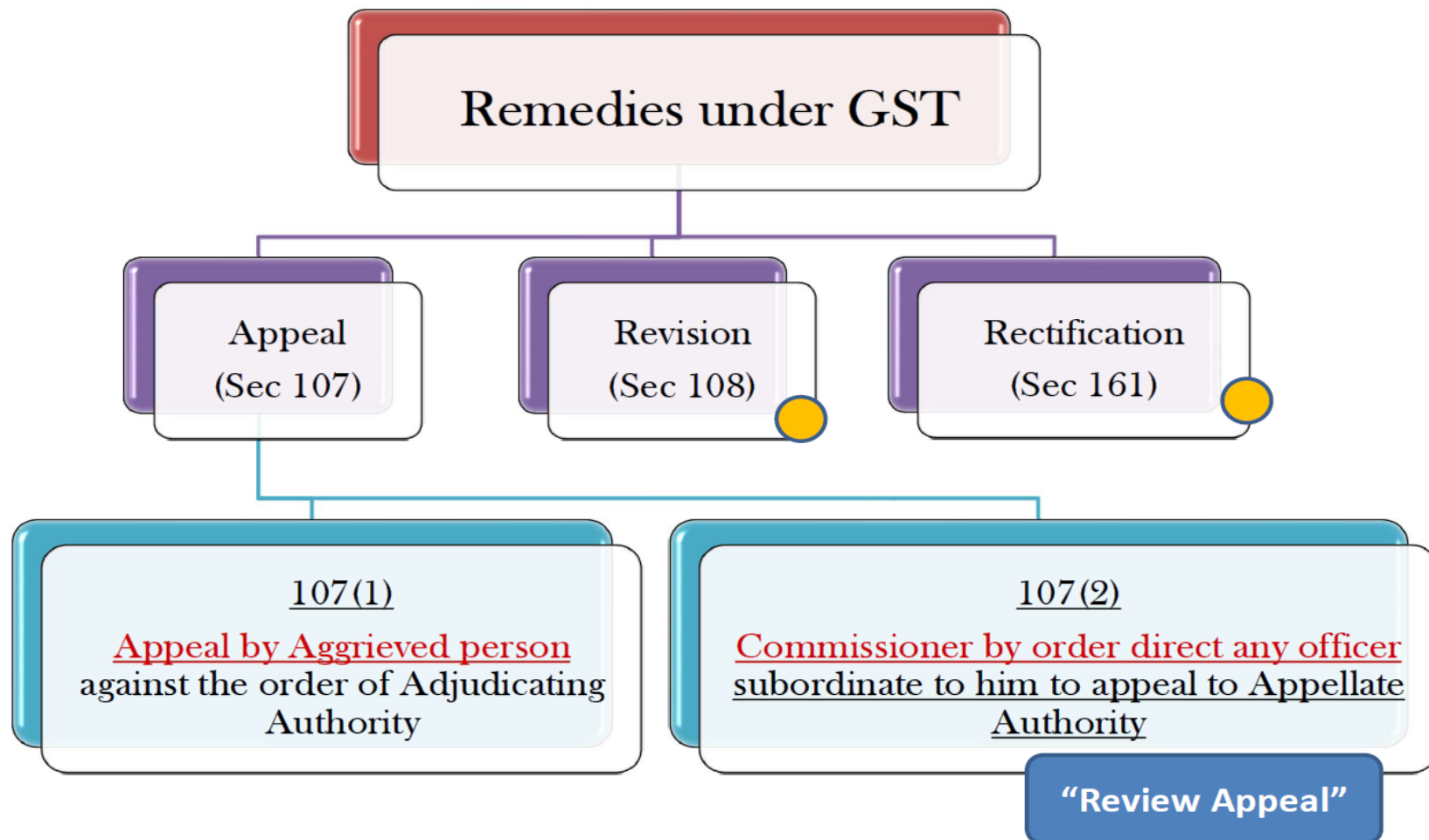
**ACAE CHARTERED ACCOUNTANTS
CPE STUDY CIRCLE OF
EIRC OF ICAI**

14th June, 2024 (Friday)

(Errors if any are purely un-intentional. The views are shared in the individual capacity of the speaker and not in his professional capacity and the hosts may or may not subscribe to the views of the speaker.)

CA Pradeep Modi

Remedies under GST



Note : Subject to Section 120- Appeal not to be filed in certain cases.

Some Important definition under GST



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.

Appellate authority – **Section 2(8)**

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

Revisional Authority: **Section 2(99)**

“Revisional Authority” means an **authority appointed or authorised for revision of decision or orders** as referred to in section 108.

ADJUDICATION ORDER :- Disputes arise due to **non-compliance of taxpayer with the provisions under law.** 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.

DEFINITIONS



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

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]

Illustrations:

A person may feel aggrieved in cases like

- DENIAL OF EXEMPTION
- IMPOSITION OF PENALTY
- ITC DISALLOWED

Appeal not to be filed in certain cases. Section 120 & Illustration



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

NEW MONETARY LIMITS FOR FILING 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.

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

121



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

Relevant Section & Rule under GST



CHAPTER XVII SEC 107-121	CHAPTER XII RULES 108-116
SEC 107 - APPEAL	RULE 108 & 109 – MANNER OF APPEAL TO APPELLATE AUTHORITY
SEC 108 - REVISION	RULE 109A – APPOINTMENT OF APPELLATE AUTHORITY
SEC 109 - APPELLATE TRIBUNAL AND ITS BENCHES	RULE 109B - NOTICE TO PERSON AND ORDER OF REVISIONARY 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 APPELLATE TRIBUNAL
SEC 113- ORDER OF APPELLATE TRIBUNAL	RULE 112- ADDITIONAL EVIDENCE
SEC 114- FINANCIAL AND ADMINISTRATIVE POWERS OF PRESIDENT	RULE 113- ORDER OF APPELLATE 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	

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



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



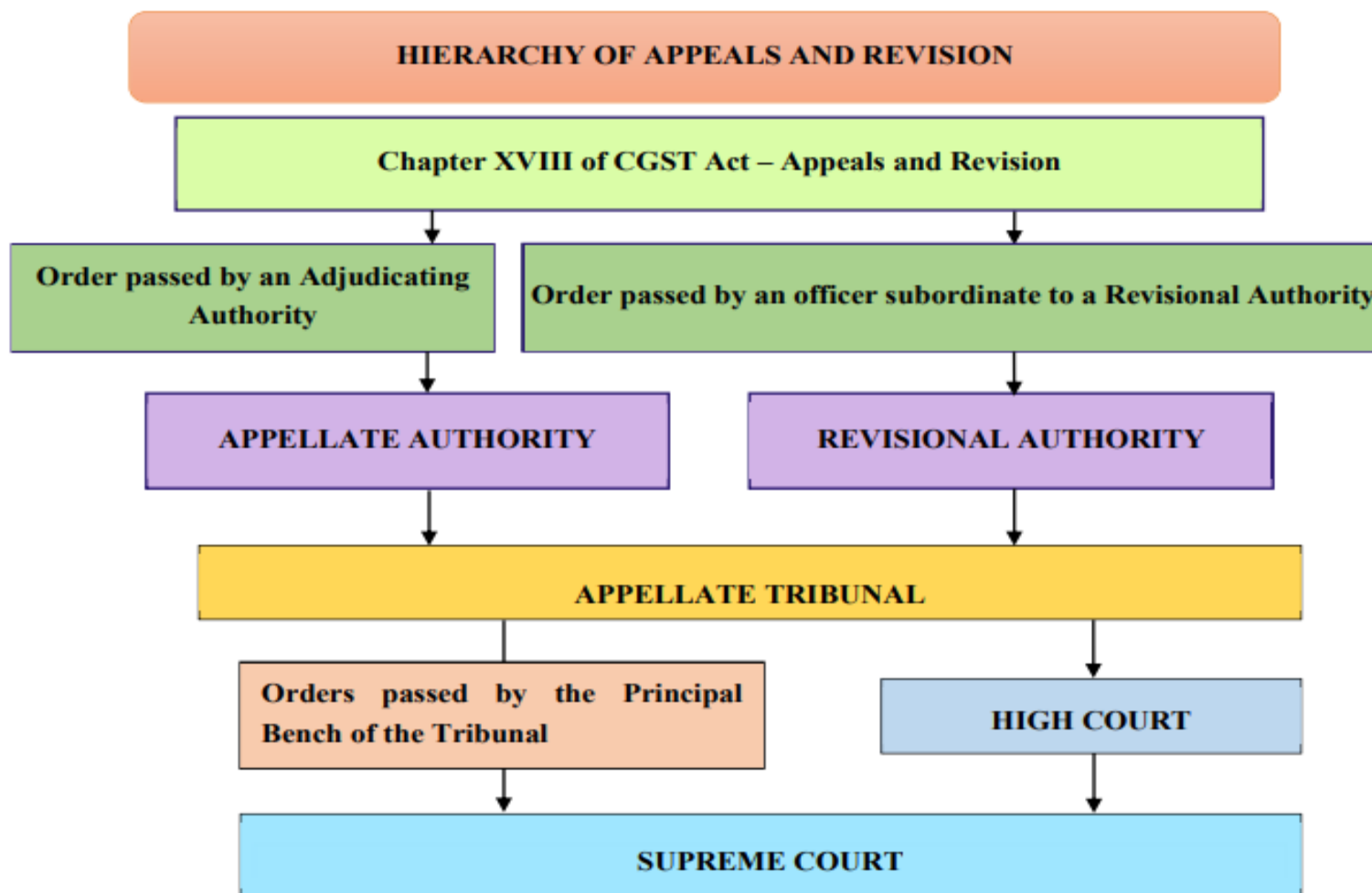
Appeal to Supreme Court

- u/s 118 of CGST Act
- Read with Rule 115
- Within 60 days from date of grant of certificate by HC

Hierarchy in GST



Stages of Appeal	Orders Passed By	Appeal To	Who Can Appeal	Section	Rule
1 st	Adjudicating Authority	Appellate Authority	1. Any Aggrieved Person 2. Commissioner	107	108, 109, 109A, 112
2 nd	Appellate Authority	Appellate Tribunal	1. Any Aggrieved Person 2. Commissioner	109 To 113	110 to 111
3 rd	Appellate Tribunal	High Court/ Supreme Court	1. Any Aggrieved Person	117	114
4 th	High Court	Supreme Court	Any Aggrieved Person	118	-





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

Appellate Authority (Rule 109A)

Order Passed By (N/N 55/2017)

- | | |
|-----|---------------------------------------|
| i) | Addt. Comm/Joint Comm. |
| ii) | Asst.Comm. /D.Comm. or Superintendent |

Comm. (Appeal)

Any Officer not below the rank of Joint Comm. (Appeals)

AA shall not refer the case back for fresh adjudication.

No Pre-Deposits

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.



Mandatory Pre-deposit

Authority	Pre-deposit	
	When the tax involved is CGST	When the tax involved is IGST
AA	Admitted CGST liability in full + 10% of the CGST in dispute, subject to a maximum of 25 crore rupees*	Admitted IGST liability in full + 10% of the IGST in dispute, subject to a maximum of 50 crore rupees
Appellate Tribunal	Admitted CGST liability in full + 20% of the CGST in dispute, in addition to the amount deposited before AA as pre-deposit, subject to a maximum of 50 crore rupees*	Admitted IGST liability in full + 20% of the IGST in dispute, in addition to the amount deposited before AA as pre-deposit, subject to a maximum of 100 crore rupees

**Equivalent amount of SGST is also required to be deposited. Therefore, whether the appeal involves CGST+SGST or IGST, in both the cases, the aggregate amount of tax to be deposited or maximum amount (excluding the admitted liability) is the same.*

Circular No. 172/02/2022 Can

Pre-Deposit made through utilisation of ITC Ledger?



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.

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:

<u>Cases where waiver of pre-deposit may be granted</u>	<u>Cases where waiver of pre-deposit may NOT be granted</u>
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	

HC granted relief to assessee to take 10% of amount required for filing appeal as his bank a/c was frozen by GST dept.



THE HON'BLE MADRAS HIGH COURT IN THE CASE OF RATHINAVEL PANDIAN V/s ASSISTANT COMMISSIONER (ST) , decided on 27-11-2023

👉 Issue:-✓ Can assessee was permitted take 10% of amount required for filing appeal from its freezing bank account?

👉 The Hon'ble High Court Judgement:-

✓ Assessee had challenged Recovery order passed by revenue, confirming demand for recovery of ITC along with interest and penalty each against CGST and SGST

—

✓ Since assessee was having a statutory appeal remedy, instant writ petition was to be disposed of and assessee was directed to file statutory appeal before Appellate Authority within four weeks and as an interim arrangement assessee was permitted take 10% of amount required for filing appeal from its bank account. - Section 73 read with 107 of Central Goods and Services Tax Act, 2017.

Penalty order under GST to be treated as SCN to seek release of vehicle seized u/s 129



THE HON'BLE **ALLAHABAD HIGH COURT** in the case of **AKBAR ALI TRANSPORT SERVICES V/s STATE OF U.P.**, decided on 9-1-2024

👉 Issue:-✓ Can Penalty order under GST to be treated as SCN to seek release of vehicle seized u/s 129?

👉 The Hon'ble High Court Judgement:-

✓ Where Competent Authority had seized vehicle of assessee under section 129(1) and imposed penalty under section 129(3), said authority was to be directed to pass a reasoned order after affording /due opportunity of hearing to assessee for release of vehicle.

✓ Assessee was entitled to one opportunity of hearing before /authority to furnish his explanation and assessee was to be directed to treat penalty order as show cause notice and furnish reply only for purpose of obtaining release of truck - Subject to such reply / application being filed by assessee, appropriate reasoned order was to be passed by authority after affording due opportunity of hearing to assessee Section 129 of Central Goods and Services Tax Act, 2017.

Section 109- Composition of Appellate Tribunal



PRINCIPAL BENCH <small>At New Delhi</small>				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

- 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

HIGH COURT

SUPREME COURT

Section 109- Jurisdiction of Members AGAINST orders passed by APPELLATE AUTHORITY or THE REVISIONAL AUTHORITY

<u>Matters to be heard by</u>	<u>Circumstances</u>
Principal Bench	Case, wherein one of the matters involved relates to the place of supply
Single Member	<ul style="list-style-type: none">Where tax/ input tax credit involved or amount of fine/ fee/ penalty determined in the order appealed against doesn't exceed INR 50 Lakhs; andThe matter doesn't involve any question of law.
One Judicial Member and One Technical Member	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:-**

Time limit for filing appeal before the GST Appellate Tribunal.

Due to the delay in constitution of the Appellate Tribunal, appeals could not be filed within the time limit prescribed under Section 112 of the CGST Act. Thus, vide **Removal of Difficulty Order No. 09/2019-Central Tax dated 03.12.2019** it has been provided that the time limit of three months (for assessee appeals) or six months (for departmental appeals), shall be reckoned from the following dates, whichever is later.

- (i) Date of communication of order; or
- (ii) The date on which President or the State President as the case may be of the Appellate Tribunal after its constitution under Section 109, enters office.

This was further clarified vide **Circular No. 132/2/2020-GST dated 18th March 2020.**

As per the above clarification issued by the Central Government the three months' time limit for filing appeal against the orders passed by the Appellate Authority or Revisional Authority shall commence from the date on which President of the GSTAT or the President of the State Bench of the **Appellate Tribunal enters office**, after it has been constituted as per Section 109 of CGST Act, 2017.

CA Pradeep Modi



Query: As we all know GST Tribunals across various states are presently non functional.

What to do with the order passed by the Additional Commissioner (Appeals), which is now appealable to GST Tribunal? Should we keep them pending? Will the time limit of the limitation be counted from the day the GST Tribunal will be made functional in the particular jurisdiction?

The President (**Shri. Sanjaya Kumar Mishra**) has taken oath on 06.05.24 ; you have 3 months time i.e. 05.08.24. Please do not be so helpless.

Answer:- As I have commented, the President has to enter the office, to start the work and his office is yet to be notified. This gives additional time. This argument is debatable and not final.

Please wait till 04.08.24. The government will issue some clarification before this date.

Hon'ble Justice (Retd) Shri. Sanjaya Kumar Mishra has been appointed to the post of president of GSTAT

CA Pradeep Modi

STATE BENCHES

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	1	Ranchi
11	Jharkhand		
12	Karnataka	2	Bengaluru
13	Kerala	1	Ernakulum and Trivandrum
14	Lakshadweep	1	Bhopal
15	Madhya Pradesh		
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	1	Hyderabad
24	Telangana		
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	1	Guwahati Aizawl(Circuit) Agartala(Circuit) Kohima (Circuit)
30	Arunachal Pradesh		
31	Assam		
32	Manipur		
33	Meghalaya		
34	Mizoram		
35	Nagaland		
36	Tripura		

Explanation — 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.

Measures to reduce litigations arisen due to the non-constitution of the GST Tribunal



Case: *Gulf Oil Lubricants India Ltd.* [2023-TIOL-253-HC-MUM-GST]

Issue : Measures to reduce litigations arisen due to the non-constitution of the GST Tribunal

Observations : The *Hon'ble Bombay High Court* in **Gulf Oil Lubricants India Ltd. [2023-TIOL-253- HC-MUM-GST]** has directed the Revenue Department to incorporate measures to reduce the inflow of litigations in the Court, which has arisen due to the non-constitution of the GST Tribunal, by incorporating the stipulation contained in ***Circular No. JC (HQ)-1/GST/2020/Appeal/ADM-8 dated May 26, 2020*** (“the Circular”), to put the taxpayer into notice, *that the time limit for filing the appeal is extended and if a declaration is filed within the stipulated period,* the protective measure would automatically come into force.



✓ Can attachment was effected of assessee's immovable property without waiting for statutory period of three months of appeal filing?

Non-Constitution of GSTAT: Kerala GST Dept directs Taxpayers to Submit Declaration of appeal proposal before GSTAT to stay Revenue Recovery

Section 78. Initiation of recovery proceedings

Section 79. Recovery of tax.-

Instruction No. 01/2024-GST	30-May-2024	Guidelines for initiation of recovery proceedings before three months from the date of service of demand order- reg.
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Measures to reduce litigations arisen due to the non-constitution of the GST Tribunal



HC granted statutory benefit of stay of recovery due to non-constitution of Tribunal THE Hon'ble PATNA HC in the case of DAYANAND PRASAD V/s STATE OF BIHAR decided on 25-7-2023

👉 **Issue** : Due to non-constitution of GST Tribunal, what sort of remedy to the Assessee ?

👉 **Hon'ble HC Judgement** : First appellate authority specifically rejected appeal on ground that there was absolutely no evidence produced to substantiate contention - Petitioner essentially had a statutory remedy of appeal against impugned order before Tribunal under section 112 of GST Act - However, due to non-constitution of Tribunal, Assessee was deprived of his statutory remedy and availing benefit of stay of recovery hence Assessee was allowed to file appeal on constitution of Tribunal and statutory benefit of stay was granted.

HC stayed demand recovery in absence of GST Tribunal



The Hon'ble ORISSA HIGH COURT in Pravakar Behera v/s Commissioner of CT & GST W.P (C) NO. 15051 OF 2023 I.A. NO. 6935 OF 2023 MAY 15, 2023

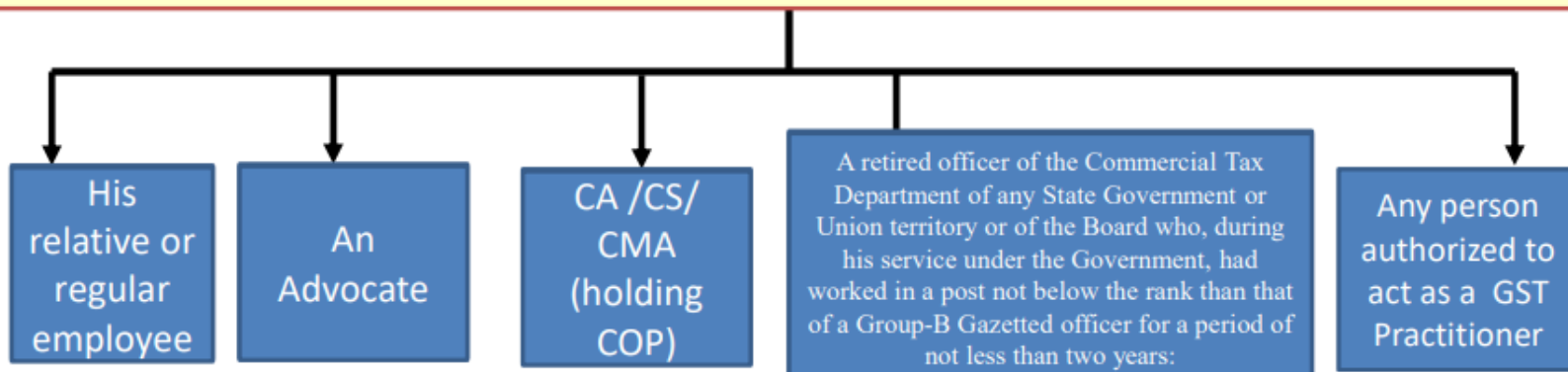
👉 **Issue** : Petitioner wants to avail remedy under provisions of law by approaching second Appellate Tribunal which had not yet been constituted.

👉 **Hon'ble HC Judgement** : HC stayed demand recovery in absence of GST Tribunal during pendency of writ petition.



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.



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.
- Some Important points under 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

Date of filing Appeal

After filing GST appeal online, We have to submit these documents to the office of GST Appeal Authority within 7 days.

- 1) **Singed Copy** of APL 1
- 2) Acknowledgment comes for APL 01, its copy
- 3) **Self Certified copy of DRC 07** and Detailed Order, the taxpayer will self certify on this, **earlier this was certified by the Proper Officer**, now it has been changed to Self Certified by the taxpayer.
- 4) Copy of Detailed Appeal with **grounds**
- 5) **Related Docs** of your point or appeal
- 6) Appeal **Pre-deposit** 10% Deposit **Confirmation**
- 7) You have to give all this **within 7 days of APL 1**
- 8) then the **appeal authority will give you APL 2**, APL 2 means that your appeal has now been received by the appeal authority.
- 9) If you give all this **within 7 days**, then your appeal date will be considered the same as the day you filed APL 1.
- 10) If you give all this **after 7 days**, then the date of your appeal will be considered to be the day on which you give all this.



- Appeals rejected as time-barred due to late submission of self-certified copy of the decision.
- Cites Rule 108 of the CGST Rules, 2017, arguing that self-certified copies are not required when appeals are filed electronically via FORM GST APL-01.

High Court Rulings:

- Various High Courts, including Orissa and Madras, ruled that non-submission of certified copies is a technical defect.
- Appeals should not be dismissed on this ground if filed electronically on time.
- Orissa High Court emphasized that procedural requirements should not overshadow the merits of the case.



High Court Decision:

- Non-filing of the certified copy within seven days, when the appeal is filed electronically on time, is a technical defect.
- Appeals should not be dismissed solely for this reason.
- The appellate authority is directed to re-hear the appeals and pass a reasoned order on merits within three months.

The impugned order is quashed, and the case is remanded for a fresh hearing.

Manual Filing of Appeal Notification 29/2023-CT



Manual Filing of Appeal

An Appeal to the Appellate Authority shall be made in FORM GST APL-01 electronically.

However, the same appeal may be filed manually in FORM GST APL-01 only in specified circumstances along with the relevant documents, only if-

- ✓ The Commissioner has so notified, or
- ✓ The same cannot be filed electronically due to non-availability of the decision or order to be appealed against on the common portal,
- ✓ In such a case, a provisional acknowledgement shall be issued to the Appellant immediately.

For details, please refer to Rule 108 of CGST Rules, 2017 read with Notification No. 38/2023-Central Tax dated 04.08.2023

C A Pradeep Modi



- **PRADEEP KANTHED V/S UNION OF INDIA & OTHERS** [SUPREME COURT PETITION NO. 1006/2023]
DTD. 20.10.2023
- GST returns are filed under sections 39 of the GST Act, but **there is no provision for revised returns in the Act, Rules, or the GSTN Portal.** This is in stark contrast to **other revenue laws, such as the Income Tax Act, VAT Act, and Customs and Duties Act, which all typically include provisions for revised returns.**
- **Supreme Court Seeks Finance Ministry's Response on Revised GST Returns**
- In the petition filed by Pradeep Kanthed, it is stated that **despite seven years having passed since the enactment of the GST Act and Rules, along with more than 3,500 amendments, circulars, and notifications, no significant attention has been given to the availability of revised returns on the GSTIN Portal to date.**

The matter is scheduled for a hearing on January 12.

CA Pradeep Modi

B2B Supply wrongly shown as B2C -Credit denied to Buyers



Case:

- M/s.WIPRO LIMITED INDIA
- M/s. SUN DYE CHEM HC-MAD-GST
- M/s SHIVA JYOTI CONSTRUCTION HC-ORISSA-GST

Issue : B2B Supply wrongly shown as B2C.

Observations : Court permits the petitioner to resubmit corrected Form-B2B under GSTR- I and to enable the petitioner to do so a direction is issued to Opposite Parties to receive it manually

C A Pradeep Modi

WRONG GSTIN MENTIONED INADVERTENTLY - CREDIT NOT DENIED TO BUYERS

even if earlier periods

Assessee's request to amend/rectify Form GSTR-I could not be rejected if wrong GSTIN mentioned inadvertently even if earlier periods



The Hon'ble **Bombay High Court** in the case of **Star Engineers (I) (P.) Ltd. v. Union of India**

Issue

✓ During the financial year 2021-22, the petitioner (assessee) mistakenly reported the **GSTIN** of third-party vendors instead of the correct **GSTIN** belonging to 'XYZ' (presumably another entity) in Form **GSTR-I** for the months of July 2021, November 2021, and January 2022. This resulted in 'XYZ' being unable to claim Input Tax Credit (ITC) for the invoices, leading to a reduction in the payment amount by 'XYZ.'

✓ **Rectification Request and Rejection** The petitioner acknowledged the error and sought approval to rectify the mistake in Form **GSTR-I**.

✓ However, the Deputy Commissioner rejected the request, citing that the matter was time-barred.

C A Pradeep Modi

**WRONG GSTIN MENTIONED INADVERTENTLY -
CREDIT NOT DENIED TO BUYERS** even if earlier
periods



👉 **The Hon'ble High Court Judgement**

✓ **The errors made by the petitioner were inadvertent and made in good faith, without any intention to gain illegally. Consequently, the court directed the respondent authorities to allow the petitioner to amend/rectify Form GSTR-I for the relevant period, either through online or manual means, within a four-week period.**

Time Limit for Correction of Return



Section 39(9) Time Limit for Correction of Return

- If any registered person after furnishing a return discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in such form and manner as may be prescribed, subject to payment of interest under this Act.
- Provided that no such rectification of any omission or incorrect particulars shall be allowed after the the thirtieth day of November following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.
- PROCEDURAL AMENDMENT EXTENDING THE RETURN FILING DATE TO 30TH NOVEMBER IS GIVEN RETROSPECTIVE EFFECT FROM 01.07.2017: KERALA HIGH COURT



- Hon'ble High Court of Kerala a recent judgment in the case of M/s. M.Trade Links vs Union of India. (Case WP(C) No. 31559 of 2019) has generated considerable debate among GST consultants. The court's decision to allow extension of deadline under Article 16(4) till November 30 for the years 2017-18 and 2018-19.

ITC Sec 16(4)



The Section 16(4) of CGST Act 2017 prescribes that the date to claim Input Tax Credit (ITC) for any financial year would be: , whichever is earlier.

1. A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both **after the thirtieth day of November** following the end of financial year to which such invoice or debit note pertains or
2. furnishing of the relevant annual return **whichever is earlier** else such ITC would be lapsed forever.

Thirumalakonda Plywoods Vs. Assistant Commissioner –Division Bench judgement dated 18.07.2023



- Time limit prescribed for claiming ITC under section 16(4) of APGST Act/CGST Act, 2017 is not violative of Articles 14, 19(1)(g) and 300-A of Constitution of India.
- Section 16(2) of APGST/CGST Act, 2017 has no overriding effect on section 16(4) as both are not contradictory with each other; they operate independently.
- Mere acceptance of Form GSTR-3B returns with late fee will not exonerate delay in claiming ITC beyond period specified under section 16(4) of APGST/CGST Act, 2017.
- The PATNA HIGH COURT in the case of GOBINDA CONSTRUCTION VIS UOI decided on 08-09-2023 has been delivered same type of judgement

N.No.47/2019-Central Tax:

Dtd. 9th October, 2019



In respect of **FY: 2017-2018** and **2018-2019**, Registered Persons:

- whose **aggregate turnover** in a financial year **does not exceed Rs. 2 crores** &
- who have not furnished the Annual Return before the due date, will follow a special procedure, such that they **shall have the option to furnish the Annual Return**.

Provided, that the said annual return **shall be deemed to be furnished on the due date if it has not been furnished before the due date**.

- **GSTR-9 and 9C -Not . No. 32/2023-CT financial year 2022-23**
- Exempts filing of GSTR-9 the registered person whose aggregate turnover in the financial year 2022-23 is up to **two crore rupees**.

How Long to Keep the Records Sec 36



Period of Retention of Documents

- 72 months from due date of filing of annual return i.e. 31st Dec 20xx
- 6 years and 9 months from end of the year
- Party to Appeal / Revision/other proceeding -1 year after the Final disposal or period specified above, which ever is later.

DETERMINATION OF TAX LIABILITY AND ISSUE OF ORDER



Assessment of tax liability and issue an assessment order **within a period of five years from the date** specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates :

- (1) **Section 62.** Assessment of **non-filers of returns.**
- (2) **Section 63.** Assessment of **unregistered persons.**
- (3) **Section 74.** Determination of tax by reason of fraud or any wilful misstatement or suppression of facts. **(Fraud cases)**

Section 73. Assessment of **Non Fraud Cases.**

Determination of tax and Issue of order by proper officer for any reason other than fraud or any wilful misstatement or suppression of facts relates to or within **three years from the date** of erroneous refund. Section 73 read with sub section (10).

GSTR-9/9C DUE DATES & OTHER VIS-À-VIS DATES



Financial Year	Due Date/ Extended Due Date	Period of retention of accounts (72 Months)	Assessment of Non-Filers of Returns (5 Years)	Assessment Unregistered Person (5 Years)	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized	
		Section 36	Section 62	Section 63	Section 73(10) Other than fraud	Section 74(10) By Fraud
2022-23	31.12.2023	31.12.2029	31.12.2028	31.12.2028	31.12.2026	31.12.2028
2021-22	31.12.2022	31.12.2028	31.12.2027	31.12.2027	31.12.2025	31.12.2027
2020-21	28.02.2022 (CT-40/2021)	28.02.2028	28.02.2027	28.02.2027	28.02.2025	28.02.2027
2019-20	31.03.2021 (CT-04/2021)	31.03.2027	31.03.2026	31.03.2026	31.03.2024 30.06.2024 31.08.2024	31.03.2026
2018-19	31.12.2020 (CT-80/2020)	31.12.2026	31.12.2025	31.12.2025	31.12.2023 31.03.2024 30.04.2024	31.12.2025
2017-18	05.02.2020 (CT-06/2020)* 07.02.2020 (CT-06/2020)# *(Chandigarh, Delhi, Gujarat, Haryana, Jammu & Kashmir, Ladakh, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, Uttarakhand.) #(Andaman and Nicobar Islands, Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Dadra and Nagar Haveli and Daman and Diu, Goa, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Lakshadweep, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Odisha, Puducherry, Sikkim, Telangana, Tripura, West Bengal, Other Territory)	05.02.2026 07.02.2026	05.02.2025 07.02.2025	05.02.2025 07.02.2025	05.02.2023 07.02.2023 31.12.2023 30th September 2023 NN 13/2022 dtd 5th July 2022 N. 09/2023 dated 31/03/2023	05.02.2025 07.02.2025

C A Pradeep Modi



Section 75(2) which provide converting proceeding from section 74 to section 73.

- “(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.”
- How a tenor of notice can be changed once, case is decided against the revenue.

Section 75(11) need to be omitted, which provide exclusion of period of pending proceedings in other cases.

- **Section 75(11)** - “(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.”

NN- 56/2023 CT Dtd : 28/12/2023



Time limit to issue	Normal Circumstances	Fraud, Wilful misstatement and suppression
Order	Within 3 Years from Due Date for Furnishing GSTR-9	Within 5 years from Due Date for Furnishing GSTR-9
Notice	3 Months before the above date	6 months before the above date

Year	Earlier Due Date		New Due Dates	
	Notice	Order	Notice	Order
2017-2018	30 th September 2023	31 st December 2023	30 th September 2023	31 st December 2023
2018-2019	31 st December 2023	31 st March 2024	31 st January 2024	30 th April 2024
2019-2020	31 st March 2024	30 th June 2024	31 st May 2024	31 st August 2024

Issuance of Goods and Services Tax Demand Order under Section 73(9) of Central Goods and Services Tax (CGST) Act as per limitation periods under Section 73(10) extended in line with the following Notifications —



- **Covid Extension**

- Notification No. 35/2020 – Central Tax [3rd April, 2020],
- Notification No. 14/2021 – Central Tax [1st May, 2021],
- Notification No. 13/2022 – Central Tax [5th July, 2022],
- Notification No. 09/2023 – Central Tax [31st March, 2023] and

- **No Covid Extension**

- Notification No. 56/2023 – Central Tax [28th December, 2023]

- **Section 168 – Power to issue instructions or directions**

- **Section 168A – Power of Government to extend time limit in special circumstances**

- Section 168A of the CGST Act has been inserted via **CA Pradeep Modi** *The*



- **Section 168A of Central Goods and Services Tax Act, 2017 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.

The following grounds can be relied on while moving an appeal/petition against Section 73 demand orders that are issued invoking the extended period of limitation as per the said Notifications—



1. **No Force Majeure in existence**, at the time of issuance of notification to extend the time limit.
 2. **GST Council Meetings or Press Releases give no reference to recommending** such an extension.
- Perpetual extension is possible, citing “Force Majeure”, giving a wide range of power to the government to act against honest GST taxpayers.

**Force
Majeure !!**



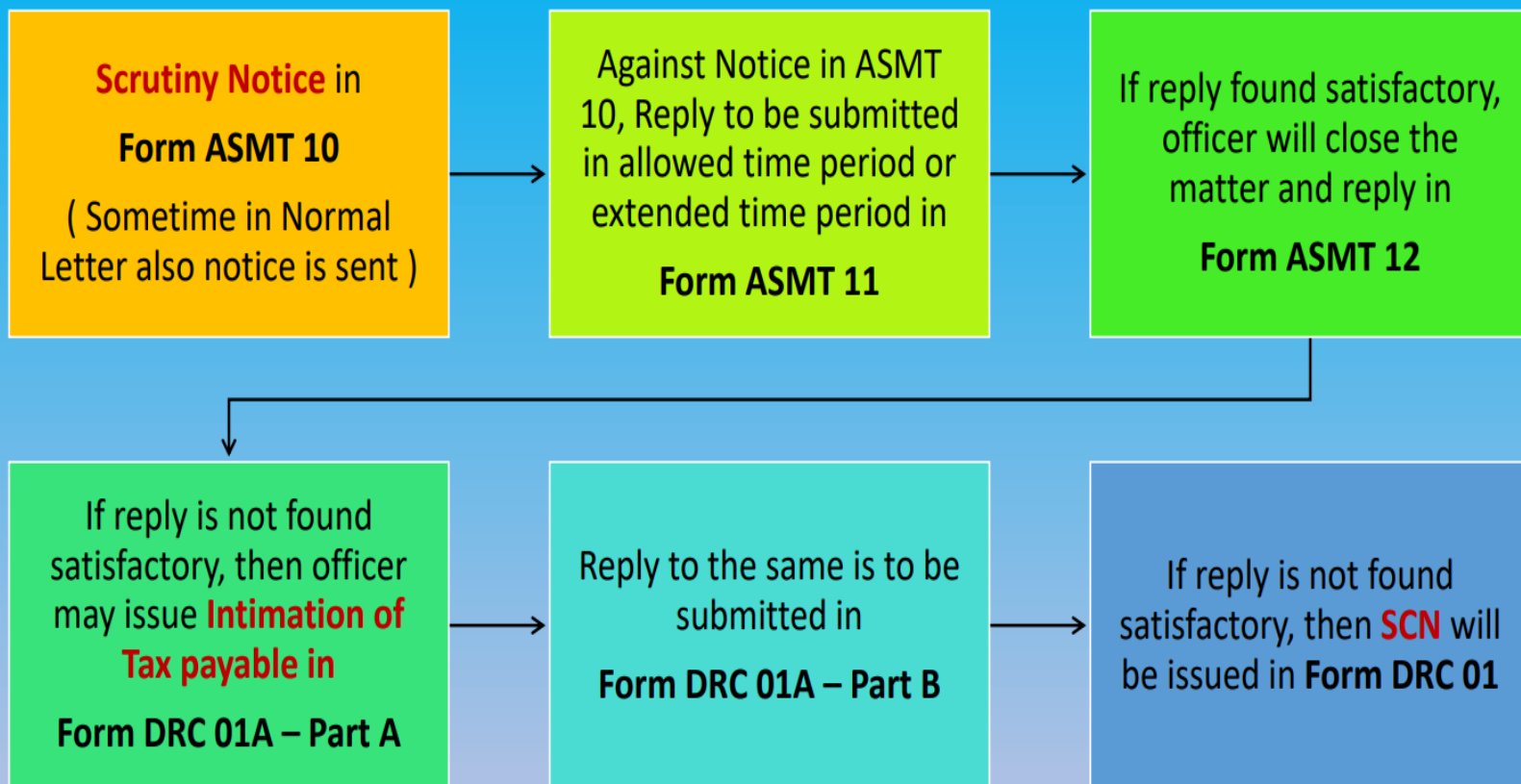
Question



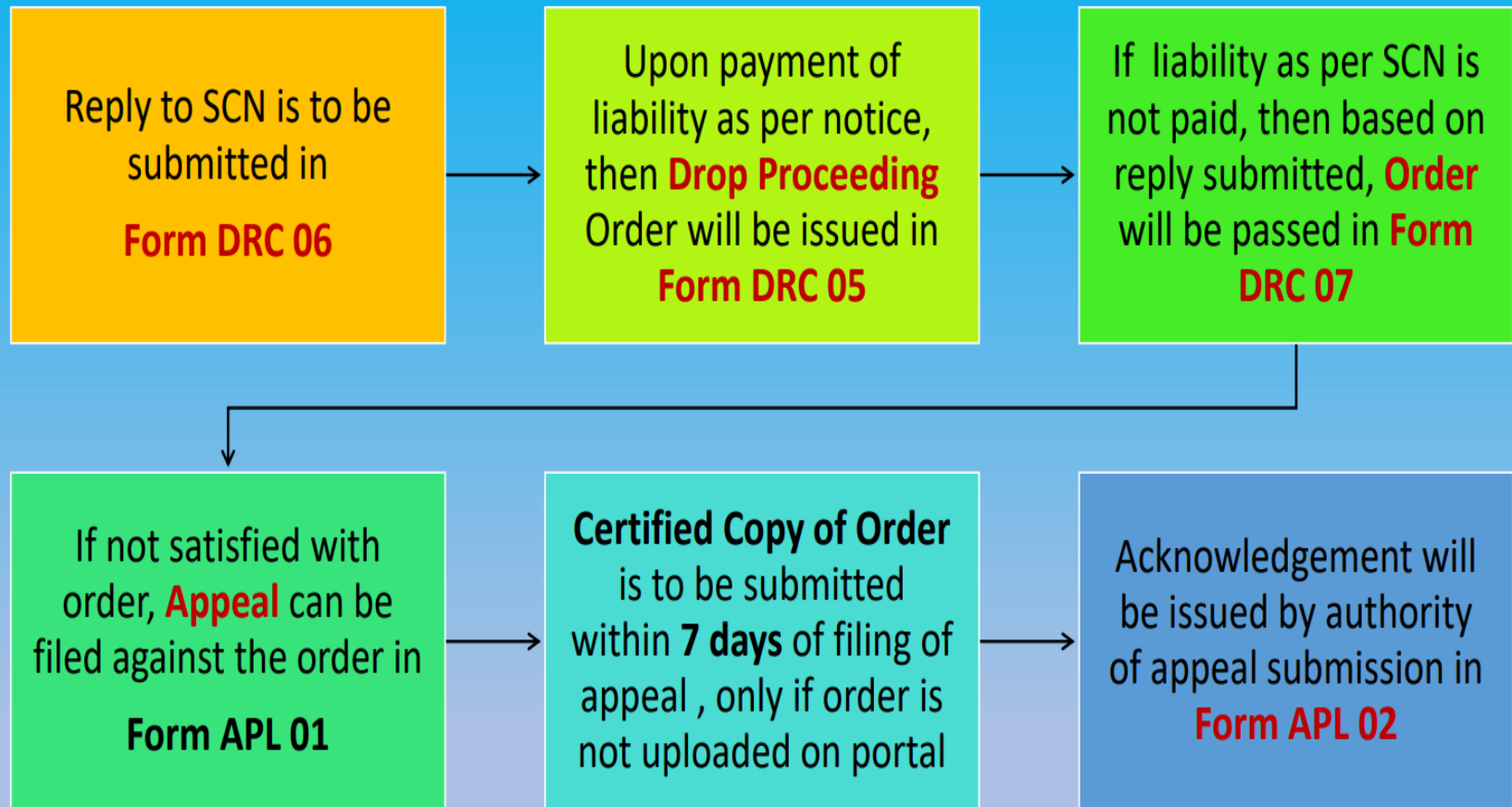
- Whether the **SCN date** will be calculated from the **Annual Retrun Due date** or the date on which the Annual Return is filed. Also, what will be due date in case **no Annual Return is filed** for the particular Year
- In a scenario where the tax liability is **short reported in GSTR 3B but considered in GSTR 9**, can the supplier contend that **section 74 is not applicable?**
- **In the case of RCM** can take ITC, there is no suppression of facts. But the department may say that since you have not taken ITC that time, now you are not eligible to take ITC as it is time barred but you have to pay RCM. Therefore, there is supression of facts
- Excess ITC claimed = found at the time of GSTR 9=but it was not utilised against any Out put tax liability = DRC 03 filed= will have to pay INTEREST AND PENALTY ?



FLOW OF => NOTICEREPLYINTIMATIONORDERAPPEAL



FLOW OF => NOTICEREPLYINTIMATIONORDERAPPEAL



Important Section for Appeal Order

Opportunity of being heard

Sec 75(4)- 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

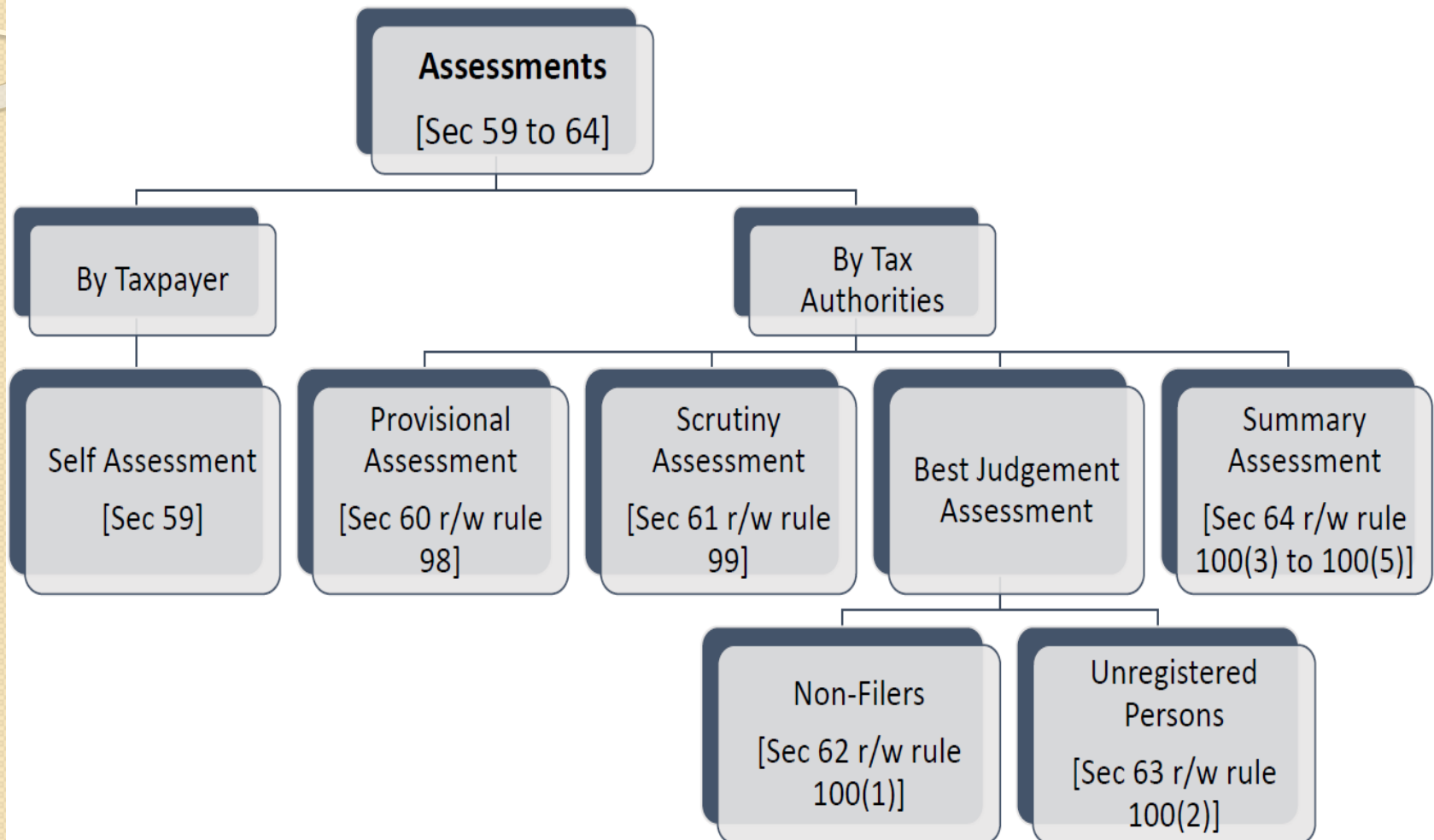
Notice and order should be on same lines

Sec 75(7)- 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.

One penalty for one default

Sec 75(13)- 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.

Type of Assessments?



Self Assessment u/s 59



Section 59 of the Act provides for self-assessment of tax liability by the tax payer.

- It states that every **registered person** shall **himself:**
 - assess the taxes payable under this Act and
 - furnish a **return** for each **tax period** as specified under section 39.
- “**Registered Person**” means a person who is registered under section 25 but does not include a person having a Unique Identity Number;
- “**Taxable Person**” means a person who is registered or liable to be registered under section 22 or section 24;

Provisional Assessment Sec-60



When can a Person request for Provisional Assessment

- A taxable person can request for provisional assessment wherein he is unable to determine
 - a) **Value** of goods or services or both
 - b) **Rate of tax applicable** on goods or services or both.

Question:-

where the issue is related to classification (lets assume - the taxpayer agrees to remit 18% instead of 12%), whether the differential credit can be passed to the buyer?

Benefit of concessional fees to given to taxpayers who filed GSTR 9/9C of FY 2017-18 onwards even before 1.04.23



The Hon'ble KERALA High Court in the case of SALOOM TRADING V/s SUPERINTENDENT OF CENTRAL GOODS AND SERVICES TAX AND CENTRAL EXCISE decided on 22-11-2023

Issue

✓ Can Taxpayers get benefit of concessional fees who have filed GSTR 9/9C of FY 2017-18 onwards even before 1.04.23?

The Hon'ble High Court's judgment

✓ Where assessee was served notice under Section 47 and assessee claimed that he was liable to avail benefit under CBIC Circular No.8/2023 dated 31-3-2023 stated that any person who had filed GSTR 9/9C in respect of financial years from 2017-18, up to 31.8.2023 should be eligible for concessional late fee, therefore, court was of prima facie view that assessee was liable to avail aforesaid benefit.

Section 47 of Central Goods and Services Tax Act, 2017.

PROPER OFFICER?

DEFINATION IN SEC 2 OF CGST ACT

2 (16) BOARD” means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;



2(25) COMMISSIONER IN THE BOARD: means The Commissioner referred to in sec 168 (power to issue instructions or directions)



2 (91) “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 2(91) of CGST Act.



REFER CIRCULAR 3/ 2017 OF CGST ACT 2017

❖ **COMMONLY JURISDICTION OFFICER IS THE PROPER OFFICER FOR ISSUING NOTICES RELATED TO RETURNS**

MODES OF SERVICE OF NOTICE : SEC 169

Modes in which department can send Notices / Order / Summon

By **giving** or
tendering it
directly

By
Registered
Post or
Speed post
or courier
with
acknowledg
ement due

By sending
on **email**
provided in
registration

By making it
available on
the
common
portal

By
publication
in a
newspaper
circulating
in the
locality

By **affixing**
it in some
conspicuous
place at his
last known
place of
business or
residence

REQUIREMENT OF DIN



- Keeping government objective of accountability and transparency , Document Identification Number – DIN

system was introduced on all communication / notices from GST Department from 23rd Dec 2019 .
It would

also provide the taxpayer a digital facility to verify any communications and its genuiness.

- Any communication from GST or Custom or Central Excise department without a computer generated DIN,

would be treated as invalid and shall be deemed to be as if it has never been issued.

- In exceptional circumstances, notice can be issued without DIN, on satisfaction of below condition:

✓ Exceptional reason to be recorded in writing in the file. Such exceptional reason can be :

- o Technical difficulties in generating DIN or

- o When communication is to be made at short notice/urgent situation & authorised officer is outside the office.

✓ Such communication/notice should expressly state that, it has been issued without a DIN.

✓ Said communication is regularised within 15 working days of its issuance - (i) by post facto approval of superior officer (ii) mandatorily generating DIN after post facto approval

REQUIREMENT OF DIN



- Circular No 122/41/2019 GST dated 5th Nov 2019 and
- Circular No 128/47/2019 GST dated 23rd Dec 2019
- Format of DIN is as under:

The format of the DIN shall be **CBIC-YYYY MM ZCDR NNNNNN** where,

- (a) **YYYY** denotes the calendar year in which the DIN is generated,
- (b) **MM** denotes the calendar month in which the DIN is generated,
- (c) **ZCDR** denotes the Zone-Commissionerate-Division-Range Code of the field formation/Directorate of the authorized user generating the DIN,
- (d) **NNNNNN** denotes 6 digit alpha-numeric system generated random number.

- Importance of DIN :

charge to ensure its successful implementation. It is reiterated that any specified document that is issued without the electronically generated DIN shall be treated as invalid and shall be deemed to have never been issued. Therefore, it is incumbent upon all officers concerned to strictly adhere to these instructions.

REPLY TO GST NOTICES & EFFECTS OF NOT REPLYING



- Any reply to the GST notices can be submitted online **on the GST portal**.
- A taxpayer can use the **digital signature or e-signature** of the authorised personnel of such taxpayer or himself. Where the payment of tax and interest is required, pay such liability in the requisite form and manner. After such payment, the reply letter in requisite form must be submitted before the tax authority who sent notice.
- In case the taxpayer receiving the GST notices does not reply **within the stipulated time limit, he shall be liable for penalties and further proceedings as each case demands under the GST law**.
- A taxpayer **can authorise another representative** or a practising chartered accountant to look into the matters related to GST notices. He can do so, by **issuing Letter of Authorisation** under GST. GST authorisation letter gives the power of replying to GST notices by another representative and taking action on behalf of him.

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

SECTION 73:- A SYNOPSIS



Section 73(1):- Where it appears to the proper officer that

- ✓ **Any tax** has not been paid or short paid or erroneously refunded, or
- ✓ **Where ITC** has been wrongly availed or utilised for any reason, other than the reason of other than fraud or any wilful-misstatement or suppression of facts to evade tax,

He shall serve notice on the person chargeable with tax 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

- ✓ **73(2):- TIME LIMIT FOR THE NOTICE** under this section shall be issued **at least 3 months prior to the time limit specified for issuance of order.**
- ✓ **73(10):- TIME LIMIT FOR THE ORDER** under this section shall be issued **within 3 years from the due date for furnishing of annual return for the financial year** to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to.
- ✓ **73(10):- Order** under this section shall be issued **within 3 years from the date of erroneous refund**

SECTION 73:- A

SYNOPSIS



- ✓ **73(3):- ADDITIONAL STATEMENT FOR OTHER PERIODS**
- ✓ **73(4):- STATEMENT EQUIVALENT TO NOTICE**
- ✓ **73(5) PROACTIVE PAYMENT BY TAXPAYER & INFORM:-** Before service of notice or the statement, pay the amount of **tax along with interest payable on the basis of his own ascertainment** of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.
- ✓ **73(6) NO NOTICE AFTER PROACTIVE PAYMENT:-** The proper officer on receipt of such information, shall not serve any notice under sub-section (1) or the statement under sub-section (3), **in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.**
- ✓ **73(7) SHORT PAYMENTS** If the officer believes that the taxpayer's proactive payment is less than the actual owed amount, ***they will serve a notice for the outstanding amount.***

SECTION 73:- A

SYNOPSIS



- ✓ **73(8):- WAIVER OF PENALTY** After issuance of SCN, pays the said tax along with interest payable within 30 days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded
- ✓ **73(9):- FINAL DETERMINATION** If any representation made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to 10% of tax or 10000/-, whichever is higher, due from such person and issue an order.
- ✓ **73(11):-PENALTY FOR LATE SELF-ASSESSED TAX** Notwithstanding anything contained in 73(6) or 73(8), Penalty under 73(9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of 30 days from the due date of payment of such tax.

DEMAND AND RECOVERY – SEC 74



Particulars	If proceedings under Sec 73, penalty will be equal to --% of Tax	If proceedings under Sec 74, penalty will be equal to --% of Tax
Voluntary payment of Tax + Interest + Penalty, before service of Notice	* Nil (upon payment of T + I, officer will not issue notice)	15% (upon payment of T+I+P, officer will not issue notice)
Payment of Tax + Interest + Penalty, within 30 days of issue of Notice	* Nil (upon payment of T + I, all proceeding shall be deemed to be closed)	25% (upon payment of T+I+P, all proceeding shall be deemed to be closed)
Payment of Tax + Interest + Penalty, within 30 days of Communication of Order (under Sec 73, 10% penalty is there, if amount is not paid within 30 days after Show Cause Notice)	10% or Rs 10,000 whichever is higher	50%
Payment of Tax + Interest + Penalty, after above mentioned period	10% or Rs 10,000 whichever is higher	100%



- **“Assessment orders passed without affording opportunity of hearing to the assessee is violative of the principles of natural justice”**

Hon’ble Madras High Court

M/s. Novateur Electrical and Digital Systems Pvt. Ltd

Vs. The Assistant Commissioner (ST) and Ors.

***(W.P Nos. 4376,4379,4382,4385 of 2023 and W.M.P
Nos.4412,4413,4415,4417 of 2023***

dtd February 16,2023)

CA Pradeep Modi



- **“Mere expiry of E-way Bill does not create any scope for evasion”**

***Hon’ble Madras High Court
Thiruvannamalaiyar Transport Vs. the Deputy State
Tax Officer
(W.P No.32960 of 2022 dated December 13,2022)***



- **“SCN issued without reasons/allegations violates the Principles of Natural Justice”**

Hon’ble Delhi High Court

***Surender Kumar Jain Vs. Principal Commissioner &
Anr.***

(W.P.(C) 17700/2022 dated January 25,2023

Whether Cash can be seized?



- Section 67(2) of the Act. Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:
- Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Whether Cash can be seized?



Cash can't be seized during inspection under section 67 of CGST Act: HC The Hon'ble KERALA High Court in the case of **DHANYA SREEKUMARI V/s STATE TAX OFFICER (IB)** decided on 27-6-2023

👉 **Issue** : During the search an inspection team found cash from manufacturing unit as well as residence of petitioner they seized same under section 67(2) of the CGST Act ,2017. Is it justified?

👉 **Hon'ble High Court Judgement** : In an investigation aimed and detecting tax evasion under CGST Act, no cash can be seized under section 67 of CGST Act, especially when cash did not form part of stock-in-trade of assessee's business.

Therefore, cash seized was to be released to petitioners forthwith – Section 67 of the CGST Act, 2017.

Whether Cash can be seized?



Seizure of currency by GST officers during search is illegal and without any authority The Hon'ble Delhi High Court in **Arvind Goyal CA v. Union of India** [W.P. (C) NO. 12499 OF 2021 JANUARY 19, 2023.

👉 Issue Search operation was conducted at residence of petitioners by GST officers under section 67(2) - During course of search, officers found cash and took possession of said cash.

👉 Hon'ble High Court Judgement Since documents, books or things could only be seized under section 67 if same were useful or relevant to any proceedings under GST Act, therefore, seizure of currency by concerned officers was illegal and without any authority; and seized currency was returned.

GST Registration Can't be Cancelled Merely Stating a Firm as Bogus.



The Allahabad High Court held in M/s Apparent Marketing Private Limited.

👉 **Issue** : The department surveyed the petitioner's business premises and issued a notice proposing the cancellation of registration. The department proposed the cancellation as the petitioner was found bogus during the inspection.

👉 **Hon'ble HC Judgement** : The department could cancel the registration only if the assessee found one of the five conditions of Section 29(2). Since the statute has not used the word 'bogus', the Court ruled that registration under the Act cannot be cancelled by merely describing the firm as bogus.

👉 **Conclusion:-** The Court ruled that the notice seeking to cancel the petitioner's GST registration remained defective as the reason for cancellation does not fall under Section 29(2) of the GST Act. Hence, the High Court allowed the petition and set aside the order passed by the Assistant Commissioner, State-Tax, cancelling the petitioner's GST registration.

C A Pradeep Modi

Section 29. Cancellation or suspension of registration



(2) : The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where,-

- (a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
- (b) a person paying tax under section 10 has not furnished the return for a financial year beyond three months from the due date of furnishing the said return; or
- (c) any registered person, other than a person specified in clause (b), has not furnished returns for a such continuous tax period as may be prescribed; or
- (d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or
- (e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard:

Provided further that during pendency of the proceedings relating to cancellation of registration, the proper officer may suspend the registration for such period and in such manner as may be prescribed.

ITC can't be denied merely because registration of supplier was cancelled with retrospective effect



The Hon'ble Calcutta High Court in M/s Gargo Traders v/s Joint Commissioner, Commercial Taxes (State Tax) W.P.A. 1009 OF 2022 JUNE 12, 2023.

👉 **Issue** : Petitioner claimed credit of input tax against supply made from a supplier - Said claim was rejected by respondent-revenue on ground that supplier from whom petitioner claimed to have purchased goods were all fake and non-existing.

👉 **Hon'ble HC Judgement** : Where petitioner's claim for input tax credit was rejected due to supplier's fraudulent activity, since petitioner had paid amount of purchased articles as well as tax on same through bank and not in cash and without proper verification, it could not be said that there was any failure on the part of petitioner, order rejecting said claim was to be set aside .

Dept. can't expect from buyer to verify that seller obtained GST registration by producing fake documents or not



THE **Hon'ble ANDHRA PRADESH HC** in the case of **ARHAAN FERROUS AND NON-FERROUS SOLUTIONS PVT. LTD.** V/s DEPUTY ASSISTANT COMMISSIONER-I (ST) **decided on 3-8-2023.**

👉 **Issue** : What are the responsibility of Purchaser if Seller obtained GST registration by producing fake documents?

👉 **Hon'ble HC Judgement** : Responsibility of purchaser would be limited to the extent of establishing that he bonafidely purchased goods from the seller for valuable consideration by verifying GST registration of the seller available on the official web portal; the purchaser needed not aware of credentials and business activities of the seller or about the fact that the seller obtained GST registration by producing fake documents. .

ACTUAL PICTURE





Disclaimer: Above is for the education purposes only, and is not intended to be treated or used as legal advice or opinion.

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THANKS



CA. PRADEEP MODI

(FCA, LLB, DISA, IDT)

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70036 14408



PARTNER

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