

## Appeals, Review and Revision in GST

Q 1. Whether any person aggrieved by any order or decision passed against him has the right to appeal?

Ans. Yes. Any person aggrieved by any order or decision passed under the GST Act(s) has the right to appeal under Section 107. It must be an order or decision passed by an "adjudicating authority". However, some decisions or orders (as provided for in Section 121) are not appealable.

Q 2. What is the time limit to file appeal to Appellate Authority (AA)?

Ans. For the aggrieved person, the time limit is fixed as 3 months from the date of communication of order or decision. For the department (Revenue), the time limit is 6 months within which review proceedings have to be completed and appeal filed before the AA

Q 3. Whether the appellate authority has any powers to condone the delay in filing appeal?

Ans. Yes. He can condone a delay of up to one month from the end of the prescribed period of 3/6 months for filing the appeal (3+1/6+1), provided there is "sufficient cause" as laid down in the section 107(4).

Q 4. Whether the appellate authority has any powers to allow additional grounds not specified in the appeal memo?

Ans. Yes. He has the powers to allow additional grounds if he is satisfied that the omission was not wilful or unreasonable.

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Q 5. The order passed by Appellate Authority has to be communicated to whom?

Ans. Appellate Authority has to communicate the copy of order to the appellant, respondent and the adjudicating authority with a copy to jurisdictional Commissioner of CGST and SGST/UTGST.

Q 6. What is the amount of mandatory pre-deposit which should be made along with every appeal before Appellate Authority?

Ans. Full amount of tax, interest, fine, fee and penalty arising from the impugned order as is admitted by the appellant and a sum equal to 10% of remaining amount of tax in dispute arising from the order in relation to which appeal has been filed.

Q 7. Can the Department apply to AA for ordering a higher amount of pre-deposit?

Ans No

Q 8. What about the recovery of the balance amount?

Ans. On making the payment of pre-deposit as above, the recovery of the balance amount shall be deemed to be stayed, in terms of section 107(7)

Q 9. Whether in an appeal the AA can pass an order enhancing the quantum of duty/ fine/ penalty/

reduce the amount of refund/ITC from the one passed by the original authority?

Ans. The AA is empowered to pass an order enhancing the fees or penalty or fine in lieu of confiscation or reducing the amount of refund or input tax credit provided the

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appellant has been given reasonable opportunity of showing cause against the proposed detrimental order. (First Proviso to Section 107(11)).

In so far as the question of enhancing the duty or deciding wrong availment of ITC is concerned, the AA can do so only after giving specific SCN to the appellant against the proposed order and the order itself should be passed within the time limit specified under Section 73 or Section 74. (Second Proviso to Section 107(11)).

Q 10. Does the AA have the power to remand the case back to the adjudicating authority for whatever reasons?

Ans. No. Section 107(11) specifically states that the AA shall, after making such inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against, but shall not refer the case back to the authority that passed the decision or order.

Q 11. Can any CGST/SGST authority revise any order passed under the Act by his subordinates?

Ans. Section 2(99) of the Act defines "Revisional Authority" as an authority appointed or authorised under this Act for revision of decision or orders referred to in

section 108. Section 108 of the Act authorizes such "revisional authority" to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to 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, he may, if necessary, he can revise the order after giving opportunity of being heard to the noticee.

Q 12. Can the "revisional authority" order for staying of operation of any order passed by his subordinates pending such revision?

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Ans. Yes.

Q 13. Are there any fetters to the powers of "revisional authority" under GST to revise orders of subordinates?

Ans. Yes. The "revisional authority" shall not revise any order if

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

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

(c) the order has already been taken up for revision under this Section at any earlier stage.

Q 14. When the Tribunal is having powers to refuse to admit the appeal?

Ans. In cases where the appeal involves –

- tax amount or input tax credit or
- the difference in tax or the difference in input tax credit involved or
- amount of fine, fees or amount of penalty determined by such order,

does not exceed Rs 50,000/- , the Tribunal has discretion to refuse to admit such appeal. (Section 112(2) of the Act)

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Q 15. What is the time limit within which appeal has to be filed before the Tribunal?

Ans. The aggrieved person has to file appeal before Tribunal within 3 months from the date of receipt of the order appealed against. Department has to complete review proceedings and file appeal within a period of six months from the date of passing the order under revision.

Q 16. Can the Tribunal condone delay in filing appeal before it beyond the period of 3/6 months? If so, till what time?

Ans. Yes, the Tribunal has powers to condone delay of a further three months, beyond the period of 3/6 months provided sufficient cause is shown by the appellant for such delay.

Q 17. What is the time limit for filing memorandum of cross objections before Tribunal?

Ans. 45 days from the date of receipt of appeal.

Q 18. Whether interest becomes payable on refund of pre-deposit amount?

Ans. Yes. As per Section 115 of the Act, where an amount deposited by the appellant under sub-section (6) of section 107 or under sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, as the case may be, 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.

Q 19. An appeal from the order of Tribunal lies to which forum?

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Ans. Appeal against orders passed by the State Bench or Area Benches of the Tribunal lies to the High Court if the High Court is satisfied that such an appeal involves a substantial question of law. (Section 117(1)). However, appeal against orders passed by the National Bench or Regional Benches of the Tribunal lies to the Supreme Court and not High Court. (Under section 109(5) of the Act, only the National Bench or Regional Benches of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.)

Q 20. What is the time limit for filing an appeal before the High Court?

Ans. 180 days from the date of receipt of the order appealed against. However, the High Court has the power to condone further delay on sufficient cause being shown.

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