

INDEX

S.N.	Description	Pg.No.	No. Illus.
1	Sec 107 - Appeal to Appellate Authority	22.02	6
2	Sec 108 - Power of Revisional Authority	22.05	3
3	Sec 109 - Constitution of Appellate Tribunal and Benches Thereof	22.07	1
4	Sec 112 - Appeals to Appellate tribunal	22.07	1
5	Sec 120 - Appeal not to be filed in certain Cases	22.08	1
6	Sec 121 - Non-Appeable decision and orders	22.09	1
7	Rule 112 - Production of additional evidences	22.09	1
8	Section 107(6) and 112(8)	22.10	7
9	Combined Questions	22.13	3
	Total No. of Illustrations		24

S.No.	Description	Chap. code	Concept and Problem code	No. Illus.
1	Study Mat	22	Q 1, 2, 6, 11, 15,	5
2	Examination	22	Q. 4, 5, 7, 9, 14, 18.2, 19, 21,	8
3	RTP & MTP	22	Q. 3, 8, 12, 13, 16, 17, 18, 18.1, 20	9
4	Other	22	Q. 10, 22,	2
	Total No. of Illust.			24

01. Sec 107- Appeals to Appellate Authority

Q. 1: Does CGST law provide for any appeal to a person aggrieved by any order or decision passed against him by an adjudicating authority under the CGST Act?

Explain the related provisions under the CGST Act. [Study Mat]

Answer :

- ➔ Yes, as per **section 107** of CGST Act, 2017, a person aggrieved by any decision/order of an adjudicating authority under the CGST Act can file an appeal to the Appellate Authority (AA) **within 3 months** from the date of communication of such decision/order.
- ➔ The AA can **condone** the delay in filing of appeal **by 1 month** if it is satisfied that there was a sufficient cause for such delay.
- ➔ The appeal can be filed only when the **admitted liability and 10% of the disputed amount** of tax arising from the said order, subject to **maximum of ₹ 20 Crore** is paid as pre-deposit by appellant
- ➔ Further, no appeal shall be filed to AA against an order u/s 129(3), unless a sum equal to **25% of the penalty** has been paid by the appellant.
- ➔ **However, no appeal can be filed against the following orders/decisions as per section 121:-**
 - a. an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer,
 - b. an order pertaining to the seizure or retention of books of account, register and other documents,
 - c. an order sanctioning prosecution under the CGST Act or
 - d. an order passed under section 80 of CGST Act (payment of tax in instalments).

Q.2: Under what circumstances, Commissioner could direct the Officer to prefer an appeal against the order of the adjudicating authority? Explain the provisions regarding the same. OR

Describe the provisions relating to Departmental appeal to Appellate Authority (AA) under section 107 of the CGST Act. [Study Mat]

Answer :

- ➔ As per **section 107** of CGST Act, Department can file a “**review application/appeal**” with the Appellate Authority.
- ➔ The **Commissioner** may, on his own motion, or upon request from the SGST/UTGST Commissioner, **examine the record** of any proceedings in which an adjudicating authority has passed any decision/ order to satisfy himself as to the **legality or propriety of the said decision/ order**.
- ➔ By an order, he may direct any officer subordinate to him to apply to Appellate Authority (AA) **within 6 months** from the date of communication of the said decision/order to determine specified points arising out of it.
- ➔ AA can **condone the delay in filing of appeal by 1 month** if it is satisfied that there was sufficient cause for such delay.
- ➔ Such application shall be dealt with by the AA as if it were an appeal made against the decision/ order of the adjudicating authority.
- ➔ There is **no requirement of making a pre-deposit** in case of departmental appeal.

Q. 3: Briefly examine whether the appeal/review application filed in the following independent cases is within the time limit prescribed under the GST law:-

- 1) The adjudicating authority issued the adjudication order on 23rd April and the same is communicated to the taxpayer - Mr. X - on 28th April. Mr. X, aggrieved by the order of the adjudicating authority filed an appeal to the Appellate Authority on 26th July.
- 2) The adjudicating authority passed the order on 3rd March (communicated same day to the Commissioner). The Commissioner directs his subordinate officer to file a review application with the Appellate Authority. The subordinate officer filed the review application on 23rd September. [CA Final RTP May 2021]



Answer:-

1)	<p>Legal Provision:-</p> <ul style="list-style-type: none">➤ As per section 107 of CGST Act, 2017, a person aggrieved by any decision/order of an adjudicating authority can file an appeal to the Appellate Authority within 3 months from the date of communication of such decision/order.➤ The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was a sufficient cause for such delay. <p>Discussion & Conclusion:-</p> <ul style="list-style-type: none">➤ In given case, the relevant date for computing the period of 3 months (for filing the appeal to Appellate Authority) is 28th April (date of communication of order) and not 23rd April.➤ Accordingly, an appeal can be filed by Mr. X to Appellate Authority within 3 months from the date of communication of order (28th April), i.e. 28th July.➤ Thus, Mr. X has filed the appeal within the time limit prescribed under the GST law.
2)	<p>Legal Provision:-</p> <ul style="list-style-type: none">➤ As per Section 107 of CGST Act, 2017, by an order, Commissioner may direct any officer subordinate to him to apply to Appellate Authority within 6 months from the date of communication of said decision/order to determine specified points arising out of it.➤ The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay <p>Discussion & Conclusion:-</p> <ul style="list-style-type: none">➤ In present case, Commissioner directs his subordinate officer to file a review application with the Appellate Authority which should have been filed till 3rd September (i.e. within 6 months from the date of communication of order).➤ But the subordinate officer filed the application on 23rd September, i.e. after 3rd September.➤ Thus, appeal has not been filed within the time limit prescribed under the GST law.➤ However, Appellate Authority can condone delay in filing of appeal upto 3rd October (i.e. up to 1 month) if it is satisfied that there was sufficient cause for such delay.

Q. 4: On scrutiny of returns filed by Chandan & Co., the Department found some discrepancy in ITC claimed by the company and consequently a Departmental audit was conducted under section 65 of the CGST Act. On conclusion of the audit in February, the Department issued a Show Cause Notice (SCN) alleging that the company had wrongly and deliberately claimed ITC in the returns without actual receipt of goods for the month of January. The Joint Commissioner of Central Tax, not being satisfied by the reply given by the company to the SCN, passed a written order on 28th April which was received by the company on 1st May. The order confirmed the tax demand of ₹ 30,00,000 (i.e., CGST ₹ 15,00,000 and SGST ₹ 15,00,000) and imposed a penalty of equal amount under section 74A.

Aggrieved by the order, Chandan & Co. decides to contest the order of adjudication in its entirety. It seeks advice on the following issues -

- To whom should it make an appeal? Can it directly approach the High Court?
- What is the time limit for filing the appeal in the given case?
- Is there any requirement of pre-deposit of any amount and if so, what would be the amount?

Provide your legal and reasoned advice to Chandan & Co. [CA Final May 22 Exam]

Answer:-

(i)	<ul style="list-style-type: none">➤ An appeal against the order passed by Joint Commissioner lies before the Appellate Authority - Commissioner (Appeals).➤ Chandan & Co. cannot directly approach the High Court.➤ It needs to first file an appeal to Appellate Authority and then to Appellate Tribunal.➤ However, a writ petition can be filed directly before the High Court for relief.
-----	--

(ii)	<p>⇒ The time-limit for filing an appeal in the given case is 3 months from the date of communication of the order appealed against, i.e., 3 months from 1st May.</p> <p>⇒ Hence, the appeal must be filed on or before 1st August.</p>
(iii)	<p>⇒ No appeal can be filed before the Appellate Authority unless appellant Chandan & Co. has paid pre-deposit of ₹ 3,00,000 which is computed as sum of the following:-</p> <p>a) Full amount of tax, interest & penalty arising from the order as admitted by him (i.e. Nil) &</p> <p>b) 10% of the remaining tax in dispute (₹ 30,00,000) arising from the order, i.e. ₹ 3,00,000, subject to maximum ₹ 40 Crores.</p>

Q.5: Miss Meena is aggrieved by the order passed by the Assistant Commissioner and wants to file an appeal with Commissioner (Appeals). Her accountant, who looked after her GST related matters including filing of GST returns /other compliances online, is on leave for one month. So, she decides to file the appeal manually.

The order against which appeal is to be filed is available on the GST portal. There was no such notification issued by the commissioner that appeal can be filed manually.

With reference to the provisions of GST law, you are required to ascertain:-

(i) Whether Miss Meena can file an appeal to the commissioner (Appeals) in this case?

(ii) Whether decision taken by Miss Meena to manually file an appeal is valid?

Also explain the relevant legal provisions in support of your answer. [CA Final Nov 24 Exam]

Answer:-

(i)	<p>⇒ An appeal may be filed to the Commissioner (Appeals) against an adjudicating order if such an order is passed by the Additional or Joint Commissioner.</p> <p>⇒ However, where the order is passed by the Assistant Commissioner, the appeal is to be filed to any officer not below the rank of Joint Commissioner (Appeals).</p> <p>⇒ Thus, in the given case, appeal cannot be filed to the Commissioner (Appeals), but to any officer not below the rank of Joint Commissioner (Appeals).</p>
(ii)	<p>⇒ An appeal to the Appellate Authority may be filed manually only if-</p> <p>(i) the Commissioner has so notified, or</p> <p>(ii) the decision or order to be appealed against is not available on the common portal.</p> <p>⇒ Therefore, in light of the facts of the given case, the appeal cannot be filed manually.</p>

Q.6: Pursuant to audit conducted by the tax authorities under section 65 of the CGST Act, 2017, a show cause notice for fraud was issued u/s 74A of CGST Act to Home Furnishers, Surat, a registered supplier, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July, 20XX. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20th August (received by Home Furnishers on 22th August) confirming a tax demand of ₹ 50,00,000 (i.e., CGST ₹ 25,00,000 and SGST ₹ 25,00,000) and imposing a penalty of equal amount under relevant provisions of the CGST Act, 2017.

Home Furnishers does not agree with the order passed by the Joint Commissioner. It decides to file an appeal with the Appellate Authority against the said adjudication order. It has approached you for seeking advice on the following issues in this regard:-

- 1) Can Home Furnishers file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax? If yes, till what date can the appeal be filed?
- 2) Does Home Furnishers need to approach both the Central and State Appellate Authorities for exercising its right of appeal?
- 3) Home Furnishers is of the view that there is no requirement of paying pre-deposit of any kind before filing an appeal with the Appellate Authority. Give your opinion on the issue. [Study Mat]

Answer:-

1)	<p>Legal Provision:-</p> <ul style="list-style-type: none">➤ As per section 107 of CGST Act, 2017, a person aggrieved by any decision/order of an adjudicating authority under the CGST Act or SGST Act or UTGST Act can file an appeal to the Appellate Authority within 3 months from the date of communication of such decision/order.➤ The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was a sufficient cause for such delay. <p>Discussion & Conclusion:-</p> <ul style="list-style-type: none">➤ Yes, Home Furnishers can file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax.➤ It can file the appeal to Appellate Authority on or before 22nd November i.e. within 3 months from the date of communication of such decision/order that can be further condoned by 1 month.
2)	<p>Legal Provision:-</p> <ul style="list-style-type: none">➤ GST law makes provisions for cross empowerment between CGST and SGST/UTGST officers to ensure that if proper officer of CGST passes an order with respect to a transaction, he will also act as the proper officer of SGST/UTGST for the same transaction or vice-versa and issue the order for CGST as well as SGST/UTGST component of the same transaction.➤ But if the proper officer has passed an order under CGST or SGST or UTGST Act, any appeal/ review/ revision/ rectification against the said order will lie with the proper officers of that respective Act only under which it is passed. <p>Discussion & Conclusion:-</p> <ul style="list-style-type: none">➤ Thus, Home Furnishers is required to file an appeal only with Central Tax Appellate Authority.
3)	<p>Home Furnishers' view is not correct in law.</p> <p>Legal Provision:-</p> <ul style="list-style-type: none">➤ As per section 107(6) of CGST Act, no appeal shall be filed before the Appellate Authority (AA), unless the appellant has paid:-<ul style="list-style-type: none">a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him andb) 10% of remaining amount of tax in dispute arising from the said order, subject to maximum ₹ 20 Crores.➤ Further, no appeal shall be filed to AA against an order u/s 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant. <p>Discussion & Conclusion:-</p> <ul style="list-style-type: none">➤ In given case, since Home Furnishers disagrees with the entire tax demanded, it has to make a pre-deposit of 10% of the amount of tax in dispute arising from the said order subject maximum ₹ 20 Crores, i.e., 10% of ₹ 50,00,000 which is ₹ 5,00,000 (i.e. CGST & SGST: ₹ 2,50,000 each).

02. Sec 108- Powers of Revisional Authority

Q.7: With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates. [Study Mat] OR

Under what circumstances, the Revisional Authority (RA) cannot exercise the powers of revision under section 108 of the CGST Act, 2017. Is there any exception to the above provision? [CA Final May 24 Exam]

Answer :

- **Section 2(99)** of CGST Act defines “Revisional Authority” as an authority appointed or authorised under the CGST Act for revision of decision or orders referred to in section 108.
- **Section 108** authorizes such “revisional authority” to **call for and examine any order passed by his subordinates** and if he considers that the order of the lower authority is:-
 - erroneous in so far as it is prejudicial to revenue and illegal or improper or



- has not taken into account certain material facts or
- in consequence of an observation by Comptroller and Auditor General of India, then he may revise the order **after giving opportunity of being heard** to the person concerned.
- ➡ It **can also stay** the operation of any order passed by his subordinates pending such revision.
- ➡ **The revisional authority shall not revise any order if,**
 - a) the order has been subject to an appeal before Appellate Authority or Appellate Tribunal or High Court or Supreme Court,
 - b) the period of 6 month from date of communication of order has not yet expired or more than 3 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 at any earlier stage or
 - d) the order sought to be revised is a revisional order in the first place.
 - e) Non appealable orders and decisions i.e. order covered under section 121.
- ➡ **However,** The RA may still pass an order on any point which has not been raised and decided in an appeal before AA/Tribunal/High Court/Supreme Court, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, **whichever is later.**

Q.8: Mr. Mahendran is aggrieved by the order of the Revisional Authority (RA) and wants to make an appeal to the First Appellate Authority.

While commenting on decision of Mr. Mahendran, you are also required to state the powers of Revisional Authority to revise the orders passed by the subordinate officers under section 108 of CGST Act, 2017.

What is the time period for the Revisional Authority to exercise the power of revision? [CA Final Nov 20 Exam] [CA Final MTP Sep 24]

Answer:-

- ➡ The **decision** of Mr. Mahendran of making an appeal to the First Appellate Authority against the order of the RA is **not valid in law**, because a person aggrieved by an order passed by RA may appeal to the Appellate Tribunal which is the **second level of appeal**.
- ➡ **Powers of RA to revise orders passed by the subordinate officers u/s 108 of CGST Act, 2017 are:-**
 - 1) The RA may call for and examine the record of any proceedings-
 - on his own motion, or
 - upon information received by him or
 - on request from the SGST/ UTGST Commissioner.
 - 2) On examination of the case records, if RA is of the view that the decision/order passed under the CGST Act/SGST Act/UTGST Act by any officer subordinate to him is:-
 - erroneous in so far as it is prejudicial to revenue and illegal or improper or
 - has not taken into account certain material facts or
 - in consequence of an observation by Comptroller and Auditor General of India, then he **may stay the operation of such order** for such period as he deems fit.
 - 3) After giving an opportunity of being heard to the person concerned and making necessary further inquiry, the **RA may pass such order, as he thinks just and proper, including** enhancing or modifying or annulling the said decision/order.
 - 4) Subject to further appeal to the Tribunal, High court or Supreme court, every revision order shall be being final and binding on the parties.
- ➡ **Time period for the Revisional Authority to exercise the power of revision:-**
 1. The RA can revise an order
 - **after the expiry of 6 months** from the date of communication of the said order
 - **but not later than the expiry of 3 years** from the passing of the said decision/order.
 2. The RA may pass an order on any point which has not been raised and decided in an appeal before Appellate Authority or Tribunal or High Court or Supreme Court:-
 - before the expiry of 1 year from the date of the order in such appeal **or**
 - before the expiry of 3 years from the date of initial order, **whichever is later.**

Q. 9: The original adjudicating authority confirmed a demand of GST of ₹ 42,50,000 with interest and imposed a penalty of ₹ 4,25,000 in its order dated 1st September, 20XX. The assessee filed an appeal before appellate authority challenging the demand as well as penalty.

The internal audit party, after an audit of the records of the assessee, submitted a note to the Commissioner that actual amount demanded should have been ₹ 48,50,000. While the issue was pending before the appellate authority, based on the note, the Commissioner stayed the order of the original authority and issued a show cause notice on 15th March, 20YY, proposing revision of the order of the original authority and revise the demand on the basis of the audit note.

Examine the correctness of the action taken by the Commissioner in accordance with the provisions of GST law. [CA Final Nov 18 Exam]

Answer: Legal Provision:-

- As per **section 108** of CGST Act, 2017, Revisional Authority cannot revise an order, if such order has been subject to an appeal before Appellate Authority or Tribunal or High Court or Supreme Court.
- However, the Revisional Authority may pass an order on any point which has not been raised and decided in an appeal before Appellate Authority or Tribunal or High Court or Supreme Court.

Discussion & Conclusion:-

- In given case, the Commissioner wants to revise the order on the point which **is the subject matter in the appeal**.
- Therefore, the Commissioner **cannot exercise the power of revision** in respect of such order & thus, the action taken by the Commissioner is **not correct**.

03. Sec 109- Constitution of Appellate Tribunal and Benches thereof

Q.10: Whether any matter could be heard by bench of tribunal consisting of members less than 3?

Answer :

- Yes, as per **section 109** of CGST Act, in the absence of a Member in any Bench due to vacancy or otherwise, any appeal may be heard by a bench of 2 Members with the approval of the President or State President.
- Further, if the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against,
 - does not exceed ₹ 50 lakhs **and**
 - which does not involve any question of law,then the appeal may be heard by a bench consisting of a single member with the approval of the President and subject to prescribed conditions.

04. Sec 112- Appeals to Appellate Tribunal

Q.11: The Appellate Tribunal has the discretion to refuse to admit any appeal. Examine the correctness of the above statement. [Study Mat]

Answer :

- The statement is **partially incorrect**.
- As per **section 112** of CGST Act, though the Appellate Tribunal does have the power to refuse to admit an appeal, it cannot refuse to admit **any** appeal. It can refuse to admit an appeal where –
 - a. the tax or input tax credit involved or
 - b. the difference in tax or the difference in input tax credit involved or
 - c. the amount of fine, fees or penalty determined by such order,**does not exceed ₹ 50,000.**

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

Q.12: In an appeal filed with the High Court by Prateek Ltd., on the question whether activity undertaken by Prateek Ltd. amounts to supply, the appeal was decided in favour of Prateek Ltd. The amount of tax, interest and penalty involved were IGST of ₹ 1.2 crore, interest of ₹ 60 lakh and penalty of ₹ 50 lakh.

However, the Department does not agree with the order passed by the High Court and contends that the said activity amounts to supply under GST. The Department wants to file an appeal before the Supreme Court relating to the dispute pertaining to the demand of tax, interest and penalty. You are required to examine whether an appeal can be filed by the Department in the given case. Will your answer change, in case matter is related to valuation of services instead of determining whether the said activity amounts to supply? [CA Final RTP May 25]

Answer :

- As per **Section 120** of the CGST Act, 2017, the Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.
- **CBIC** has fixed the following monetary limits for filing appeals/ applications/ Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court subject to specified exclusions:

Appellate forum	Monetary limit (Amount involved in ₹)
GSTAT	20 Lakhs
High Court	1 Crore
Supreme Court	2 Crores

- Further, where the dispute pertains to demand of tax (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal, viz. ₹ 1.2 crore (amount of tax only) in the given case.
- **Thus, appeal cannot be filed by the Department to Supreme Court in the given case as the amount involved as per the circular does not exceed the monetary limit of ₹ 2 crore.**
- However, the Circular further provides that the monetary limits specified above for filing appeal or application by the Department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall not be applicable in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:
 - (i) Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India or
 - (ii) Where any rules or regulations made under the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act or
 - (iii) Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or the rules made thereunder or
 - (iv) Where the matter is related to -
 - a) valuation of goods or services or
 - b) classification of goods or services or
 - c) refunds or
 - d) place of supply or
 - e) any other issue,which is recurring in nature and/or involves interpretation of the provisions of the GST law/ the Rules/ notification/ circular/ order/ instruction etc. or
 - (v) Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers or
 - (vi) Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.
- **In view of the above, if in the given case the matter is related to valuation of services, appeal can be filed by the Department to the Supreme Court based on the merits irrespective of the monetary limits.**



06. Section 121:- Non-appealable decisions and orders

Q.13: With reference to the provisions of section 121 of the CGST Act, 2017, specify the orders against which no appeals can be filed. [CA Final RTP May 19] [Study Mat] OR

What are the non-appealable decisions and orders? [CMA Final RTP Dec. 18] OR

State the nature of orders against which no appeals can be filed. [CMA Final RTP Dec. 18] OR

Enumerate any four orders against which appeal cannot be filed under the CGST Act 2017. [CA Final Exam May 19] [CA Final MTP Mar 23]

Answer : As per **section 121** of CGST Act, 2017, **no appeal** shall lie against any decision taken or order passed by a CGST officer, if it relates to any one or more of the following matters:-

- a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer,
- b) an order pertaining to the seizure or retention of books of account, register and other documents,
- c) an order sanctioning prosecution under the CGST Act or
- d) an order passed under section 80 of CGST Act (payment of tax, interest and other dues in instalments).

07. Rule 112- Production of additional evidences

Q.14: Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the Appellate authority (AA) or the 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 AA. What are the exceptional circumstances specified in the rule where the production of additional evidence will be allowed? Can AA or the Tribunal direct production of any document or examination of any witness? [CA Final Nov 18 Exam]

Answer :

- (1) As per **Rule 112** of CGST Rules, the appellant shall not be allowed to produce before the AA or the 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 the AA.

(2) Exceptions:-

The exceptional circumstances where the production of additional evidence before the AA or the Tribunal will be allowed are as under:-

- a) where adjudicating authority or AA 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 adjudicating authority or AA; or
 - c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or AA any evidence which is relevant to any ground of appeal; or
 - d) where the adjudicating authority or AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- (3) No additional evidence shall be admitted unless the AA or the Appellate Tribunal **records in writing the reasons** for its admission.
 - (4) AA or Appellate Tribunal **shall not take any additional evidence unless** the adjudicating authority or an officer authorised by the said authority has been allowed a reasonable opportunity -
 - a) to examine evidence or document or to cross-examine any witness produced by appellant, or
 - b) to produce any evidence or witness in rebuttal of additional evidence produced by appellant.
 - (5) The rule **shall not affect the power** of the AA or Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

08 Section 107(6) and 112(8):- Mandatory pre-deposit for making appeal to Appellate Authority & Appellate Tribunal respectively

Q.15: With reference to sections 107(6) and 112(8), specify the amount of mandatory pre-deposit which should be made along with every appeal made before the Appellate Authority and the Appellate Tribunal. Does making the pre-deposit have any impact on recovery proceedings? [Study Mat]

Answer : Legal Provision:-

- As per **section 107(6)** of CGST Act, **no appeal shall be filed** before the Appellate Authority (AA), **unless the appellant has paid:-**
 - a) **full amount** of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him **and**
 - b) **10% of remaining** amount of tax in dispute arising from the said order in relation to which appeal has been filed, subject to **maximum ₹ 20 Crores**.
- Further, no appeal shall be filed to AA against an order u/s 129(3), unless a sum equal to **25% of the penalty** has been paid by the appellant.
- As per **section 112(8)** of CGST Act, **no appeal shall be filed** before the Appellate Tribunal (AT), **unless the appellant has paid:-**
 - a) **full amount** of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him **and**
 - b) **10% of the remaining** amount of tax in dispute, **in addition** to amount deposited before the Appellate Authority, arising from the said order in relation to which appeal has been filed, subject to a **maximum of ₹ 20 Crore**.
- The above limits are applicable for the pre-deposits to be made under the CGST Act. Accordingly, an equal amount of pre-deposit is payable under the respective SGST/UTGST Act also.
- If the appellant has paid the required pre-deposit, then the **recovery proceedings for the balance amount shall be deemed to be stayed** till the disposal of the appeal.

Q.16: Krish Pvt. Ltd. received an adjudication order demanding CGST and SGST of ₹ 200 crore each. Krish Pvt. Ltd. filed an appeal to Appellate Authority contesting the entire demand after depositing the mandatory pre-deposit amount. The Appellate Authority heard the appeal and decided in favour of the Department confirming the entire demand. The company filed an appeal to the Appellate Tribunal after depositing the mandatory pre-deposit amount. Determine the mandatory pre-deposit amount required to be deposited under GST law with Appellate Authority and Appellate Tribunal by Krish Pvt. Ltd. while filing appeal. [CA Final MTP Sep 23]

Answer : Legal Provision:

- As per **section 107(6)** of CGST Act, no appeal shall be filed before the Appellate Authority (AA), unless the appellant has paid:-
 - a) **full amount** of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and
 - b) **10% of remaining** amount of **tax in dispute** arising from the said order in relation to which appeal has been filed, subject to maximum **₹ 20 Crores**.
- As per **section 112(8)** of CGST Act, no appeal shall be filed before the Appellate Tribunal (AT), unless the appellant has paid:-
 - a) **full amount** of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and
 - b) **10% of the remaining** amount of **tax in dispute, in addition** to amount deposited before the Appellate Authority, arising from the said order in relation to which appeal has been filed, subject to a maximum of **₹ 20 Crore**.

Discussion & Conclusion:

- In the given case, the amount of pre-deposit to be made by Krish Pvt. Ltd. for filing the appeal to the Appellate Authority is **₹ 20 crore [10% of ₹ 200 crore (tax in dispute)]**. Equivalent amount has to be paid for SGST too.
- Thus, a **total of ₹ 40 crore** has to be paid by the company as pre-deposit for **filing the appeal to the Appellate Authority**.



- Further, the amount of pre-deposit to be made by Krish Pvt. Ltd. for filing the appeal before the Tribunal is **₹ 20 crore [10% of ₹ 200 crore (tax in dispute)]**. Equivalent amount has to be paid for SGST too.
- Thus, a **total of ₹ 40 crore** has to be paid by the company as pre-deposit for **filing the appeal to the Appellate Tribunal**.

Q.17: Nitya Associates is engaged in supplying taxable services in Kerela. The Assistant Commissioner of Central Tax passed an adjudication order under section 74A which was received by Nitya Associates on 18th October. In the said order, GST liability of ₹ 6,00,000 (CGST + SGST) was decided along with interest payable @ 18% p.a. for number of delayed days and a penalty of ₹ 60,000. Nitya Associates was in complete disagreement with said order. So, it filed an appeal before the Appellate Authority on 31st October.

Determine the amount of pre-deposit to be made by Nitya Associates for filing the appeal.

Whether your answer would be different if Nitya Associates appeals only against part of the demanded amount, say ₹ 4,00,000 and admits the balance liability of tax amounting to ₹ 2,00,000 and proportionate penalty arising from the said order? [CA Final RTP May 23] [Study Mat-Similar]

Answer : Legal Provision:-

- As per **section 107(6)** of CGST Act, **no appeal shall be filed** before the Appellate Authority (AA), **unless the appellant has paid:-**
 - a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him **and**
 - b) 10% of remaining amount of tax in dispute arising from said order, subject to maximum ₹20 Crores.
- Further, no appeal shall be filed to AA against an order u/s 129(3), unless a sum equal to **25% of the penalty** has been paid by the appellant.
- Equivalent amount is required to be deposited with respect to SGST liability also.

Discussion & Conclusion:-

- Thus, in the given case, Nitya Associates has to make a pre-deposit of 10% of ₹ 6,00,000, which is **₹60,000** (i.e. CGST ₹ 30,000 and SGST ₹ 30,000).
- However, when Nitya Associates admits the liability of ₹ 2,00,000 (CGST + SGST) and disputes only the balance tax demanded of ₹ 4,00,000, it has to make a **pre-deposit of:**
 - (i) **₹ 2,00,000 + ₹ 20,000** [proportionate penalty on tax admitted] + **interest @ 18% p.a.** payable on the tax admitted for the period of delay, **and**
 - (ii) 10% of ₹ 4,00,000 which is **₹ 40,000**.

Q.18: In an order dated 20th August issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed IGST demand of ₹ 280 crore. The company is disputing the entire demand of IGST and wants to know the amount of pre-deposit it has to make under the IGST Act for filing an appeal before the Appellate Authority against the order of the Joint Commissioner.

Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the Appellate Authority, determine the amount of pre-deposit to be made by the company for filing the said appeal. [Study Mat][CA Final MTP May 25]

Answer:

- As per **section 107(6)** of CGST Act read with **section 20** of IGST Act, no appeal shall be filed before the Appellate Authority (AA), unless the appellant has paid:-
 - a) **full** amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him **and**
 - b) **10%** of remaining amount of tax in dispute arising from the said order in relation to which appeal has been filed, subject to **maximum ₹ 40 Crores** in case of IGST.
- Further, no appeal shall be filed to AA against an order u/s 129(3), unless a sum **equal to 25% of the penalty** has been paid by the appellant.

- As per **section 112(8) of CGST Act** read with **section 20 of IGST Act**, no appeal shall be filed before the Appellate Tribunal (AT), unless the appellant has paid:-
- full** amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him **and**
 - 10%** of the remaining amount of tax in dispute, **in addition** to amount deposited before the Appellate Authority, arising from the said order in relation to which appeal has been filed, subject to a **maximum ₹ 40 Crores** in case of IGST.

Discussion & Conclusion:-

- In given case, pre-deposit for filing an appeal with Appellate Authority against the order of Joint Commissioner, where entire amount of tax is in dispute, is **₹ 28 crore** which is **lesser** of following:-
 - ₹ 28 crore i.e. [10% of tax ₹ 280 crore in dispute] or
 - ₹ 40 crore.
- In given case, pre-deposit for filing an appeal with Appellate Tribunal against the order of Appellate Authority, where entire amount of tax is in dispute, is **₹ 28 crores** which is **lesser** of following:-
 - ₹ 28 crores i.e. [10% of tax ₹ 280 crores in dispute] or
 - ₹ 40 crores.

Note:- Similar question is given in [CA final RTP Nov 19] with the following changes in Question and answer:

- CGST in dispute ₹ 280 crore** is given instead of IGST ₹ 280 crore.
- Maximum limit of pre-deposit u/s 107(6) & u/s 112(8) shall be **₹ 20 crore & ₹ 20 crore, respectively**.
- The final answers for pre-deposits shall change accordingly as per amended provisions.

Q.18.1: The Appellate Authority (AA) passed an order against Venue Automobiles Pvt. Ltd. demanding IGST of ₹ 1,200 crore. Venue Automobiles Pvt. Ltd. wishes to file an appeal against the order of the AA. The company admits the liability of ₹ 100 crore but wishes to litigate the balance demand amount and thus, files an appeal to the Appellate Tribunal.

You are required to determine the amount of the pre-deposit, which is required to be paid by Venue Automobiles Pvt. Ltd. for filing the appeal. [CA Final RTP Sep 25]

Answer : Legal Provision: Section 112(8) lays down that no appeal can be filed before the Appellate Tribunal, unless the appellant deposits:

- full amount** of tax, interest, fine, fee and penalty arising from the impugned order, as is **admitted** by him, and
- 10%** of the remaining amount of tax in **dispute**, in addition to the amount deposited before the AA, arising from the said order, subject to a **maximum of ₹ 20 crore (₹ 40 crore in case of IGST)**, in relation to which appeal has been filed.

Discussion & Conclusion:

- Accordingly, in the given case, the amount of pre-deposit to be made by Venue Automobiles Pvt. Ltd. for filing the appeal to the Appellate Tribunal is computed as under:
- Full amount of tax, interest and penalty as admitted by the company, i.e. ₹ 100 crore and
 - 10% of the tax in dispute, i.e. ₹ 110 crore (10% of ₹ 1,100 crore) subject to a maximum of ₹ 40 crore.
- Therefore, **total pre-deposit** to be made by the company before filing an appeal in the Appellate Tribunal is **₹ 100 crore** (total liability admitted by the company) plus **₹ 40 crore, i.e. ₹ 140 crore**.

Q.18.2: M/s Karim Associates (supplier) was issued show cause notice under section 74A of the CGST Act, 2017 by the Adjudicating Authority (AA). In the final order dated 30-08-20XX issued to M/s Karim Associates, the Additional Commissioner of Central Tax (AA) confirmed the tax demand of ₹ 60,00,000. Demand on account of penalty of equal amount and interest amounting to ₹ 16,00,000 was also confirmed.

However, the Revisional Authority (RA), using the powers under section 108 of the CGST Act, on its own motion called for the records and found that the order passed by the AA is erroneous in so far as it is prejudicial to the interest of revenue and enhanced the tax demand to ₹ 70,00,000, penalty of equal amount and interest amounting to ₹ 20,00,000 by order dated 15-11-20XX.



The supplier admitted tax demand of ₹ 20,00,000, interest amounting to ₹ 5,00,000 and penalty for ₹ 20,00,000 and deposited the admitted tax, interest and penalty on 30-11-20XX. For the balance amount, the supplier decided to file an appeal and appointed a Chartered Accountant for this purpose. The appeal was filed with the necessary pre deposit of the amount and the same was decided in favour of M/s Karim Associates on dated 28-02-20YY.

The application for refund of pre-deposit was made on 01-03-20YY and refund was granted on 14-03-20YY.

Considering the above facts, you are required to answer the following:

1. The appellate authority to which M/s Karim Associates would be required to file the appeal against the order of RA.
2. The amount of pre-deposit required to be deposited along with the above appeal.
3. Compute the amount of interest payable on refund of such pre-deposit under section 115 of the CGST Act, 2017.
4. The amount of pre-deposit required assuming if the appeal is to be filed against the orders of appellate authority with original demand and after considering the same amount of payment of admitted demand deposited on 30-11-20XX. [CA Final May 25 Exam]

Answer :

1.	M/s Karim Associates would be required to file an appeal against the order of Revisional Authority to the Appellate Tribunal (GSTAT) .
2.	<p>☞ The amount of pre-deposit is computed as under-</p> <ul style="list-style-type: none"> ➤ full amount of tax (₹ 20 lakh), interest (₹ 5 lakh) and penalty (₹ 20 lakh) admitted, i.e. ₹ 45 lakh and ➤ 10% of the remaining amount of tax in dispute [₹ 5 lakh (10% of ₹ 50 lakh)], <p>☞ Thus, amount of pre-deposit would be ₹ 50 lakh (₹45+ ₹5).</p>
3.	<p>Interest on refund of pre-deposit shall be payable @ 9% per annum from the date of payment (30-11-20XX) till the date of refund of such amount (14-03-20YY), i.e. for 104 days, as under:</p> $= ₹ 5,00,000 \times 9\% \times 104/365$ $= ₹ 12821.92$ <p>= ₹ 12,822 (rounded off)]</p>
4.	<p>☞ In this case, the appeal should be filed to Appellate Authority and the amount of pre-deposit is computed as under-</p> <ul style="list-style-type: none"> (i) Full amount of tax, interest and penalty admitted, i.e., ₹ 45 lakh (ii) 10% of the tax in dispute, i.e. ₹ 4 lakh (10% of ₹ 40 lakh) <p>☞ Therefore, amount of pre-deposit to be made is ₹ 49 lakh (₹ 45 lakh + ₹ 4 lakh).</p>

Q.19: In an order passed dated 1st April 20XX issued to Sita Ram Pvt. Ltd., the Commissioner of Central Tax, being Revisionary Authority has confirmed IGST demand of ₹ 1400 crore, penalty of ₹ 200 crore and interest of ₹ 20 crore.

Sita Ram Pvt. Ltd. admits the tax liability, penalty and interest to the extent of ₹ 200 crore, ₹ 20 crore and ₹ 10 crore respectively but wishes to litigate the balance amount of demand and thus, Sita Ram Pvt. Ltd. deposits the required amount of pre-deposit on 12th April 20XX and files an appeal with the GSTAT.

GSTAT decides the appeal in favour of Sita Ram Pvt. Ltd. on 12th June 20XX. Sita Ram Pvt. Ltd. submits an application seeking refund of the pre-deposit along with applicable interest on 2nd July 20XX and the department acknowledges the application on the same day. The amount of pre-deposit is refunded to Sita Ram Pvt. Ltd. on 15th October 20XX.

With reference to provisions of the GST law, compute the amount of pre-deposit required to be deposited before filing an appeal to GSTAT and interest payable by the Department on refund of such pre-deposit, if any, along with necessary explanations.

Assumption: Assume the year 20XX to be a leap year. [CA Final May 24 Exam]

Answer :

- As per **section 112(8) of CGST Act**, the amount of pre-deposit to be made by Sita Ram Pvt. Ltd. for filing the appeal to the GSTAT is as under-
 - (i) full amount of tax, interest and penalty as admitted by it, i.e. **₹ 230** (₹ 200 + ₹ 20 + ₹ 10) crores and
 - (ii) 10% of the remaining tax in dispute, i.e. ₹ 120 crore (10% of ₹ 1,200 crore) subject to a maximum of **₹ 40 crores** (in case of IGST).
= ₹ 270 crores
- If the pre-deposit made by the appellant before the Tribunal is required to be refunded consequent to any order of the Tribunal, interest @ **9% p.a.** shall be payable from the date of payment of the amount till the date of refund of such amount.
- **Period of delay counted from 12th April 20XX is 186 days.**
- Interest (rounded off) = ₹ 40 crore × 9% × 186/366 = **₹ 182,95,082**

09. Combined Questions

Q.20: Mr. A had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved relates to place of supply. The order of Appellate Tribunal is also in favour of the Department. Mr. A now wants to file an appeal against the decision of the Appellate Authority as he feels the stand taken by him is correct.

You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal. [CA Final May 23 Exam] [Study Mat] [CA Final MTP April 24]

Answer :

Legal Provision:-

- As per **section 109(5)** of CGST Act, 2017, only the **Principal Bench** of the Tribunal can decide appeals where one of the issues involved relates to the **place of supply**.
- Further, as per **section 118**, appeal against orders passed by the Principal Bench of the Tribunal **lies to the Supreme Court** and not High Court.

Discussion & Conclusion:-

- In given case, since the issue involved in Mr. A's case relates to place of supply, the appeal in his case would have been decided by the Principal Bench of the Tribunal.
- Thus, Mr. A will **have to file an appeal with the Supreme Court** and not with the High Court.

Q.21: Anirudh Ltd. is registered in Telangana and paid IGST on a transaction considering the same to be inter-State supply on the basis that the customer is situated in Delhi. However, GST authorities have raised a dispute and have issued a show cause notice that since the services are rendered within Telangana, it is an intra-State supply leviable to CGST and SGST. Anirudh Ltd. has lost the case before the proper officer and also in first appeal before the Departmental Appellate Authority.

Advise Anirudh Ltd. regarding the following:-

- (i) Can Anirudh Ltd. file an appeal against the order of the first Appellate Authority? If yes, before which forum can Anirudh Ltd. file the said appeal?
- (ii) Once a valid appeal is filed by Anirudh Ltd. before the appropriate forum, can the authorities insist Anirudh Ltd. to deposit the CGST and SGST which the authorities are claiming that Anirudh Ltd. ought to have paid but has not paid.
- (iii) If Anirudh Ltd. loses at the 2nd appellate stage as well, is there any other Statutory forum available for Anirudh Ltd. to file another appeal? If yes, before which forum?
- (iv) Assuming Anirudh Ltd. loses at all levels, would there be any interest liability on Anirudh Ltd.? [CA Final Jan 2021 Exam]



Answer:-

(i)	Yes , as per section 112 of CGST Act, Anirudh Ltd. can file an appeal against the order of the first Appellate Authority to the Appellate Tribunal. Principal Bench of the Tribunal will have jurisdiction to hear the appeal as place of supply is one of the issues in dispute.
(ii)	No , as per section 112 of CGST Act, Authority can't insist , because once a valid appeal is filed i.e., on payment of requisite pre-deposit, the recovery proceedings for the balance amount of the demand in dispute gets stayed till the disposal of appeal.
(iii)	Yes , as per section 118 of CGST Act, Anirudh Ltd. can file another appeal directly before the Supreme Court against the decision of the Principal Bench of the Tribunal.
(iv)	No , there will be no interest liability on Anirudh Ltd. if it loses at all levels. A registered person who has paid IGST on a transaction considering it to be an inter-State supply which is subsequently held to be an intra-State supply is not required to pay any interest on CGST & SGST payable because there is no shortfall of overall tax amount .

Q.22: Answer the following questions independently:-

1. State the orders against which an appeal can be filed before the Appellate Tribunal.
2. What is the time limit for filing an appeal before the Appellate Tribunal?
3. Whether other party could file cross objections against the appeal preferred by the assessee or by the department u/s 112? What is the time limit & manner of filing the same?
4. Whether there is any requirement to pay fees for filing appeal or application before the Tribunal?
5. Whether the Tribunal can rectify the orders passed by it? If yes, mention the time limit to rectify.

Answer :

1.	Appeal can be filed before the Appellate Tribunal by the aggrieved person against the orders passed by the Appellate Authority or the Revisional Authority .
2.	<p>➤ As per section 112 of CGST Act, an appeal can be filed before the Appellate Tribunal (AT) within 3 months from the later of:-</p> <ul style="list-style-type: none"> ➤ the date on which the order sought to be appealed against is communicated to the ➤ person preferring the appeal; or ➤ the date, as may be notified by Govt., on recommendations of Council, for filing appeal before the Appellate Tribunal. <p>➤ The Tribunal can condone the delay of up to 3 months beyond the time period specified above, if it is satisfied that there was sufficient cause for the delay.</p>
3.	<p>➤ Yes, as per section 112 of CGST Act, on receipt of notice that an appeal is filed with the Appellate Tribunal (AT), the party against whom the appeal/application is preferred may file a Memorandum of Cross Objections electronically in prescribed form (APL-06) against any part of the order appealed against within 45 days of the receipt of notice.</p> <p>➤ It may be filed manually in APL-06, only if Registrar allows the same by issuing a special or general order to that effect, subject to such conditions & restrictions as specified in said order.</p> <p>➤ AT can condone the delay in filing of memorandum of cross-objections upto 45 days beyond the 45 days specified above, if it is satisfied that there was a sufficient cause for such delay.</p>
4.	<p>➤ Yes, the fees for filing of appeal or restoration of appeal shall be ₹ 1,000 for every ₹ 1,00,000 of tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined in the order appealed against.</p> <p>➤ It shall be maximum of ₹ 25,000 & a minimum of ₹ 5,000.</p> <p>➤ However, fees for filing of an appeal for an order not involving any demand of tax, interest, fine, fee or penalty shall be ₹ 5,000.</p> <p>➤ There shall be no fee for application made before Appellate Tribunal for rectification of errors.</p>



- | | |
|----|--|
| 5. | ➡ Yes, as per section 113(3) of CGST Act, the Tribunal may amend any order passed by it to rectify any error apparent on the face of the record within 3 months from the date of the order. |
|----|--|

