Chapter 23 - Appeal and Revision Preceding Administrative ⇒ BJA Adjudication Order Power of Department ⇒ Sec 73/74/74A/76 Investigation **○** Others Order by officer below rank of Revisional Authority (P.O.) Order by PO ⇒ erroneous (Prejudicial to revenue) ⇒ Illegal or improper ⇒ Not considering material facts Review Appeal Revision (Appeal by Commissioner) Commissioner :- To satisfy himself about legality/propriety Appeal by aggrieved person (generally taxpayer) against Revisional Authority ○ On his own motion or on the request of oTime limit-Within 6 Months order of P.O. On his own motion commissioner from SGST /UTGST Act ⇒ Form-GST APL-01 from Communication of On information received by him **⇒** Form-GST APL-03 order → Manner- Electronically (manually if notified by Commissioner or if ⇒ Manner- Electronically (manually if notified) ○ On the requet of SGST/UTGST Comm., may call ⇒ Condonation - 1 Month order to be appealed against is not available on portal) by Commissioner or if order to be appealed for & examine records. ⇒ No pre- deposit required Time limit -Within 3 Months from Communication of order against is not available on portal) (Records=includes all records available at the Condonation for delay- 1 month for reasonable cause time of examination by RA) Appellate Authority **Revision Authority** Order cannot be revised by RA Order Passed By Order Passed By AA shall be:-RA shall be:-⇒ RA cannot revise following orders i) Addt.Comm/Joint Comm. Comm. (Appeal) i) Addt.Comm/Joint Comm.—Principal Comm./Comm. - Order subject to appeal before Pre-Deposits AA/AT/HC/SC ii) Asst.Comm./D.Comm. Any Officer not below ii) Asst. Comm. / D. Comm. J. Comm / Addt. Comm - Order having period before 6 months, or Superintendent the rank of Joint Comm Mandatory or Superintendent & after 3yrs from communication of (Appeal) Pre-deposits= (AA) After enquiry pass such order as he think just and order 1) AA shall not refer the case back for fresh adjudication Full amount of tax / proper which includes enhancing or modifying or 2) Order to be passed by AA within 1 yr from the date - Order already taken for revision interest / penalty / fine annulling the original order - Revisional order of filing appeal. (Agreed) against order of AA/RA Exception: -10% of dispute amount of tax Note: - No pre-deposit for RA may pass an order on any point not dispute amt. of penalty, Appeal by Aggrieved person Application by Dept. raised in any appeal before AA/AT/HC/SC, interest & late fee etc. Form & before expiry of :- In APL -07 within 6 months from Subject to maximum 25 Cr (i.e Time limit In APL -05 within 3 months from *1 yr. from date of order in appeal, CGST/SGST: 25 Cr & IGST: order date communication of order (or) 50 Cr) (+ further 3 months) *3 yr. from date of initial order, For Appeal against order under sec whichever is later 129(3) Pre-deposit = 25% of penalty

Pre-Deposits

Mandatory Pre-deposits=(AT)

Full amount of tax / interest / penalty / fine (Agreed) Note: It is addition to Predeposit with AA

20% of dispute amount of tax Subject to maximum 50 Cr,

including members who first heard it.

IGST = 100 Cr

Appellate Tribunal (AT) [GSTAT]

Centre				State		
Principal Bench (at New Delhi)				State benches		
Р	JM	TM(C)	TM(S)	2JM	TM(C)	TM(S)
Jurisdiction:- to hear appeals against orders passed by AA/RA				Jurisdiction: to hear appeals against the orders passed by AA/RA other than those discussed for Principal bench besides.		
adjudicate matters referred in Sec 171 (2) (i.e Anti-profiteering)						

appeal:- If tax/ ITC/ fine/ fee/ penalty in any order appealed against <= ₹50 lakhs & does not involve any question of law, then appeal may be heard by single Member with approval of President.

No. of members required to hear

In all other cases, it shall be heard together by 1 JM & 1 TM.

Manner of filing Appeal, Application & Memorandum	It is filed electronically except where Registrar allows manually by general/special order.
AT can refuse an appeal	Where- Amount of tax/ ITC/ Difference in tax or ITC/ fine/ fees/ penalty determined by such order = upto 50000/-
Memorandum of cross objection	Can be filed (within 45days from receipt of notice) in FORM GST APL-06 (Condonation= + 45days).
Fees	1,000/- for every ₹1,00,000/-of tax etc., Max. ₹25,000/- & Min. 5,000, fee = ₹5,000 if appeal is for order not having demand of tax, int, fine, fee or penalty.
Distribution/Transfer	Subject to jurisdiction discussed above, President shall distribute business of AT & transfer cases among benches.
Validity of Act	Act or proceedings of AT shall be not be questioned or invalid merely due to vacancy or defect in its constitution.
Date for filing appeal/application	1. If order is uploaded on portal, appeal is filed on date of provisional acknowledgment (ack). 2. If not uploaded, appellant must submit/upload a self-certified copy within 7 days of filing APL-05/07 & date of provisional acknowledgment becomes the filing date. If submitted after 7 days, the filing date is the date of uploading of self-certified copy. 3. Final ack. In APL-02 is issued after defect removal in all above cases. 4. The appeal is treated as filed only when the final ack, is issued.

Order of AT

Difference in opinion on Situations	President shall	Order of AT	pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or		
(a) appeal was		Refer the case back	to the AA or to the RA, or to the original adjudicating authority, for a fresh adjudication.		
Members of a State Bench,	of a State Bench within State or,	Time Limit of Order	The law provides an advisory time limit of 1 year from the date of filing of appeal for the Tribunal to decide the appeal.		
Bench is available	to a Member of a State Bench in another State	Copy of Order	The Tribunal shall send a copy of its order to AA/RA/Original adjudicating authority/ Appellant/ Jurisdictional Commissioner or commissioner of CGST/SGST/UTGST		
(b) appeal was originally heard by Members of Principal Bench,	from Principal Bench	Binding M Effect	Every order passed by the AT shall be final and binding on the parties unless the dispute is taken to a higher appellate forum.		
Member is available, State Bench in		in the same	Important Note: 1) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein 2) All proceedings before the AT shall be deemed to be judicial proceedings under Indian Penal Code, and the AT shall be deemed to be civil court		

Indian Penal Code, and the AT shall be deemed to be civil court.

& hear cases that may be notified by Govt.

Rectification Order by AT

AT may amend any order passed by it so as to rectify any error apparent on the face of the record if such error is

- noticed in the order by its own accord, or
- is brought to its notice by the
- > CGST/SGST/UTGST Commissioner or
- > the other party to the appeal

the date of the order.

P: President, JM: Judicial Member, TM: Technical Member

⇒ If amendment has the effect of enhancing an assessment or reducing a refund or ITC or otherwise increasing the liability then party has been given an opportunity of being heard.

Withdrawal of appeal/application

- Apply in APL-05/07W before issue of order by AT
- ⇒ file it fresh in original time limit- if final ack, in APL-02 is issued
- within a period of 3 months from \triangleright withdrawal need approval of AT in 15 days of filing application

=> If order is of AT(Principal Bench)

Appeal shall be lie to SC against an order

passed by the principal Bench of tribunal

Appeal shall be lie SC asgainst an order passed by the HC where HC certifies to be a fit one for appeal to the Supreme court

Appeal shall be lie High Court against an order passed by the State Benches of tribunal

Supreme Court (SC)

High Court (HC)

=> If order is of AT(State Benches)

Sec 119: - Sums due to be paid notwithstanding appeal, etc.:-

Sums due to Govt. on order passed by Principal Bench or State Benches of AT u/s 113(1) or High Court shall be payable, irrespective of fact that appeal is preferred to higher authority.

- ⇒ Form- GST APL-08
- Time Limit: Within 180 days from date of order appealed against is received by aggrieved person.
- Question of Law: The HC may admit such appeal if it is satisfied that the case involves a substantial question of law.

Rule 112- Production of Additional Evidence before AA/AT

Appellant shall not be allowed to produce before the AA or the AT additional evidence, whether oral or documentary.

Exception: - In following cases, production of Additional Evidence shall be allowed: -

- → Adjudicating Authority / Appellate Authority refused to admit evidences, which ought to have been admitted,
- → Appellant was prevented by sufficient cause from producing evidences called by Adjudicating Authority / Appellate Authority
- ⇒ Appellant was prevented by sufficient cause from producing evidences relevant to any ground of appeal to Adjudicating Authority / Appellate Authority
- Adjudicating Authority / Appellate Authority has made order appealed against, without giving sufficient opportunity to appellant to produce evidences

Additional Evidence: - Means evidence 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.

Sec 116- Authorised Representative for AA/AT

- → Authorised Representative -→ Relative/regular employee,
- > Advocate / CA / CMA / CS,
- > IDT gazetted officer (only after 1 yr from retirement)
- > GST practitioner

- ⇒ Disqualification for Authorised Representative-
- Person dismissed/ removed from Govt service
- Person convicted any offence under law
- Person found guilty of misconduct
- > Person, who is insolvent

Sec 121 - Orders - against which appeal cant be filed

- ⇒ Orders- against which appeal cant be filed:-
- > Order of Comm./other for transfer of proceedings from one officer to another officer
- > Order of seizure / retention of books, docs etc
- > Order sanctioning prosecution
- Order u/s 80 related to payment of tax/interest etc in installments

Note:-Representative before HC/SC require degree of law

Sec 120 read with Circular no. 207/1/2024: Appeal not to be filed in certain cases:

Monetary Limits: The Board may set monetary limits for CGST officers when filing appeals or applications based on GST Council recommendations. Accordingly, CBIC fixes following monetary limits:

Appeallate Forum	Monetary Limit (₹)	
GSTAT	20,00,000	
High Court	1,00,00,000	
Supreme Court	2,00,00,000	

Restriction application to P.O.

- ⇒ Non-Filing Exception: A CGST officer can still file appeals in other cases involving similar issues, even if they didn't file due to monetary limits.
- ⇒ No Acquiescence: A party in an appeal or application cannot argue that the CGST officer agreed with a decision just because they didn't file an appeal due to these limits.
- Consideration by Tribunal: The Appellate Tribunal or Court will consider the reasons for a CGST officer's non-filing of an appeal due to the set monetary limits.

Note: Refer regular notes for detail discussion of Circular no. 207/1/2024.

Student notes:-