

# Practical Challenges and Issues in Handling GST Audits, Adjudication and Appeals

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# Practical Challenges and Issues in Handling GST Audits

# Statutory Provisions Relating to Audit

- Section 2 (13) “audit” means the examination of **records, returns and other documents** maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the **correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance** with the provisions of this Act or the rules made thereunder;
- **Section 65. Audit by tax authorities.** -(1) The Commissioner or any officer authorised by him, by way of a **general or a specific order**, may undertake audit of any registered person for **such period**, at **such frequency** and in **such manner** as may be prescribed.
- **Rule 101.** Audit Procedure: Prescribes the manner in which audit under Section 65 shall be conducted, including notice (Form GST ADT-01), audit report (Form GST ADT-02).

# Statutory Provisions Relating to Audit (Cont.)

- **Section 66. Special audit.** -(1) If at any stage of **scrutiny, inquiry, investigation or any other proceedings** before him, any officer not below the rank of Assistant Commissioner, having regard to the **nature and complexity of the case** and the interest of revenue, is of the opinion that **the value has not been correctly declared or the credit availed is not within the normal limits**, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.
- **Rule 102.** Audit Procedure: Prescribes the manner in which audit under Section 66 shall be conducted, including notice (Form GST ADT-03), audit report (Form GST ADT-04).

# Issues Faced by the Assessee During Audit U/s 65

**XYZ Ltd. is a GST registered entity and facing departmental Audit U/s 65 of the CGST Act for the period from FY 2017-18 to 2024-25. They have approached you to advise whether the following actions of the department are in accordance with law or not?**

## **MAINTAINABILITY OF THE AUDIT**

1. XYZ Ltd. is the only company from the entire industry who was selected for Audit. XYZ Ltd. is aggrieved by the same. Can this be challenged?
2. A special audit has already been conducted against XYZ Ltd. For FY 2017-18 under Section 66 of the CGST Act, 2017. Can a general audit under Section 65 be initiated for the same financial year?

# Issues Faced by the Assessee During Audit U/s 65 (Cont.)

3. An audit under Section 65 has been completed against XYZ Ltd. by a Central GST officer for FY 2018-19. Is it permissible for a State GST officer to initiate a separate audit against Mr. XYZ Ltd for the same financial year?
  - Section 6 (2)(b) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.
4. A SCN has already been issued to XYZ Ltd. for FY 2019-20. Can the same period still be subjected to an audit under Section 65 of the CGST Act, 2017?
  - PSK Engineering Vs. AGST Salem- 2024 (6) TMI 1034-Mad
  - MAG Filters and Equipements Pvt. Ltd. CGST Audit, Gurugram 2025 (94) GSTL 46 (P&H)
5. Proceedings under Section 67 of the CGST Act, 2017 (inspection, search, and seizure) have been initiated against XYZ Ltd.. Can simultaneous proceedings also be initiated against him under Section 65?
  - Suresh Kumar P.P. vs. Deputy Director- 2020 (8) TMI 418 –Ker.
  - SLP dismissed by SC reported at 2021(50) GSTL J73(SC)
  - R.P. Buidcon (P.) Ltd. Vs. Superintendent , CGST 2023 (68) GSTL 114 (Cal.)

# Issues Faced by the Assessee During Audit U/s 65 (Cont.)

## ISSUES DURING THE COURSE OF AUDIT

6. Audit team has sought to physically verify stock. Is such physical verification legally permissible?
  - Para C(v) of the Maharashtra Trade Circular dated 21-12-2020
    - “(v) The AO can verify stock of goods and ask for clarification if any discrepancies.”
    - Section 2 (13) “audit” means the examination of **records, returns** and other **documents maintained** or furnished by the registered person.
    - Section 67(1) (a) of the CGST Act, 2017.
7. The Audit team is of the opinion that many of the documents are secreted in one secret chamber at one of the place of businesses. Can Audit team search such place of business to find out the secreted documents?
  - Para C(v) of the Maharashtra Trade Circular dated 21-12-2020.
  - Section 67(2) of the CGST Act, 2017.

# Issues Faced by the Assessee During Audit U/s 65 (Cont.)

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8. The Audit team wants to carry with them some of the important documents for further examination by expert. Is this permissible?
  - Para C(v) of the Maharashtra Trade Circular dated 21-12-2020.
9. The Audit team is of the opinion that many of the documents are lying at residence of the Director hence the audit should be undertaken at the residence of the director. Is this permissible?
  - 65 (2) The officers referred to in sub-section (1) may conduct audit at the place of business of the registered person or in their office.



# Issues Faced by the Assessee During Audit U/s 65 (Cont.)

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10. During the course of Audit, Audit team is asking to provide documents mentioned below.
- Separate trial balances for each distinct state registration.
  - Internal Audit report
  - Details of all the properties held by directors.
  - E-Mail dump of specific individuals.

Whether XYZ Ltd. is legally bound to provide the same?

- Section 35 R/w Rule 56

# Issues Faced by the Assessee During Audit U/s 65 (Cont.)

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## OTHER GENERAL ISSUES

11. GST Registration of an assessee is cancelled with effect from an anterior date . Whether Audit can be ordered?
  - “65. (1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.”
  - Tvl. Raja Stores Vs. AC 2023 (77) GSTL 367 (Mad.)
12. Taxpayer exist but documents maintained by him are seized by other law enforcement agencies? Whether Audit can be proceeded with?
  - Para 7.1.3 of the Model All India GST Audit Manual 2023.

# Issues Faced by the Assessee During Audit U/s 65 (Cont.)

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## OTHER GENERAL ISSUES

13. What are the remedies available with an Assessee if the audit is being prolonged and not being completed within reasonable period of time?
14. If the GST audit conducted against the Assessee concludes without any adverse findings, does it provide him with immunity from further investigations, or proceedings for the same tax period?
15. Audit Query Raised and assessee provided sufficient explanation. Still Audit not closed with clean report. Whether it can be challenged?
  - PBL Transport Corporation – 2024 (1) TMI 1140.

# Maintainability of Special Audits U/s 66

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- 16. No proceedings are pending against ABC Ltd. Whether department can order Special Audit U/s 66 on ABC Ltd. in such cases ?
- 17. PQR Ltd claimed refund under Rule 96(10) incorrectly and the calculation is very complex whether department can order Special Audit U./s 66 in such cases?
- 18. ABC Trust is an investment trust, and the accounts are very complex however it is not registered with GST. Can Special Audit can be ordered in such case?

# Maintainability of Special Audits U/s 66

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## **Special audit.**

**66.** (1) If at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

# Tips for Handling Audit Effectively:

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## PRECAUTIONARY

- Proper Bookkeeping.
- Use reliable accounting software.
- Timely Compliance.
- Reconcile Regularly: Don't wait for an audit!
- Know Common Focus Areas: Be aware of areas auditors often scrutinize ITC, classification, POS, Valuation, RCM.

# Tips for Handling Audit Effectively: (Cont.)

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## **DURING THE COURSE OF AUDIT**

- Assign a single point of contact to coordinate.
- Cooperation with audit team.
- Modes of communication with the department?
- Facts should be properly explained.
- Specifically reply on each item of data asked for.
- Payment during the course of Audit?
- Don't argue much on procedural and clerical errors.
- Seek Professional Help.

# Practical Challenges and Issues in Handling GST Adjudication



# Statutory Provisions Relating to Adjudication

- **Section 73** – Pertains to the issuance of demand in cases **not involving fraud, willful misstatement, or suppression of facts.**
- **Section 74** – Governs cases **involving fraud, willful misstatement, or suppression of facts with intent to evade tax.**
- **Section 74A** – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason pertaining to Financial Year 2024-25 onward.
- **Section 75** – Lays down **general procedural guidelines for determination of tax**, including computation of limitation, exclusions in computing the period, deemed conclusion of proceedings, and provisions relating to interest and penalty.
- **Section 76** – Applies in cases where **tax has been collected but not paid to the Government.**
- **Section 78** – Mandates that **any amount payable as a result of an adjudication order shall be paid within 3 months** from the date of service of the order. Failure to do so may result in initiation of recovery proceedings under Section 79.

# Issue 1: Reply Vs. Writ

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- Pros & Cons:
  - Pros:
    - Speedy disposal.
    - Challenge to statutory provision possible only under writ route.
    - Challenge to Procedural infirmities etc. better addressed in Writ.
  - Cons:
    - If admitted and kept pending?
    - Wishful thinking.
    - Double edge sword
- When is the appropriate stage ? Pre SCN/SCN/Appeal?
- Appropriate court where writ has to be filed?
  - Article 226 (2) cause of action –wholly or in part.
  - State of Goa vs Summit Online Trade Solutions (P) Ltd and others 2023 (3) TMI 683 (SC)

# Issue 1: Reply Vs. Writ (Cont.)

- Whether Reply is also to be filed when writ is already filed?
- **ILLUSTRATIVE CASES WHEREIN WRIT OPTION CAN BE CONSIDERED.**
  - Whirlpool Corporation Vs Registrar of Trademark 1998 (8) SCC1
    - Enforcement of fundamental rights
    - Violation of Principles of Natural Justice
    - Proceeding are wholly without jurisdiction or vires of the statute is challenged.
  - Prescribed procedure not followed
  - Ex facie barred by limitation,
  - Alternate remedy is merely illusory.
  - Tax collected without the authority of law but refund barred by time –writ maintainable
    - Indo Swiss Synthetic Gem Mfg co. Vs Collector 1992 (59) ELT 345 (Mad.)
  - SCN opposed to Supreme Court Judgement
    - Moideen Kunthi Vs Collector 1986 (23) ELT 293(Kar.)
  - SCN contrary to appeal order which became final
    - Godrej & Boyce Vs. UOI 1984(18) ELT 172 (Bom)

# Issue 1: Reply Vs. Writ (Cont.)

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## ILLUSTRATIVE CASES WHERE IN WRIT OPTION NOT BE CONSIDERED

- Time barring provision.
- Delay/Laches
- A finding of fact arrived at by three authorities below cannot be disturbed in exercise of writ jurisdiction.
  - Koron Business System Ltd. Vs, UOI 1992 (58) ELT 48 (Bom.)
- Appeal filed before AA- No simultaneous proceeding.
  - Supra Dye chem Vs. UOI 1990 (49) ELT 196 (Bom)
- Two interpretation are possible, and authority adopted one of the views
  - Hind Syntex Ltd. Vs UOI 1985 (19) ELT 35(MP).

# Issue 2: Other Procedural and Substantive Issues

## (I) WHETHER PRE-SCN CONSULTANCY IS MANDATORY FOR ISSUANCE OF SCN?

**Rule 142 of the CGST Rules, 2017- Notice and order for demand of amounts payable under the Act.-**

...

*(1A) The [proper officer may], before service of notice to the person chargeable with tax, interest and penalty, under sub-section (1) of Section 73 or sub-section (1) of Section 74 [or sub-section (1) of section 74A], as the case may be, 9[communicate] the details of any tax, interest and penalty as ascertained by the said officer, in Part A of FORM GST DRC-01A.*

...

*(2A) Where the person referred to in sub-rule (1A) has made partial payment of the amount communicated to him or desires to file any submissions against the proposed liability, he may make such submission in Part B of FORM GST DRC-01A [, and thereafter the proper officer may issue an intimation in Part-C of FORM GST DRC-01A, accepting the payment or the submissions or both, as the case may be, made by the said person].*

8. Substituted vide NOTIFICATION NO. 79/2020 – Central Tax dated 15-10-2020 before it was read as "proper officer shall".

# Issue 2: Other Procedural and Substantive Issues

- **Section 73(5)** The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 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.
- **Section 74 (5)** The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax 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.
- **Agrometal Vendibles Private Limited Versus State Of Gujarat, 2022 (4) TMI 823 - GUJARAT HIGH COURT**
  - Set aside DRC-01 which directed to make payment otherwise recovery will be made
  - Scheme of the Act is that a person may be given one opportunity to make the payment towards tax before issuance of notice
- **ELESH AGRAWAL VS. UOI-2023 (6) TMI 363 (ALL HC)** –Objection is hyper technical and not real as assessee is not ready to pay dues hence no prejudice caused to the assessee by not serving DRC-1A.

# Issue 2: Other Procedural and Substantive Issues

## (II) WHETHER DEMAND CAN BE CONTESTED EVEN AFTER PAYING REQUISITE AMOUNT FOR CLOSURE OF THE PROCEEDING AS PROVIDED UNDER SECTION 74(5), 74(8), 74(11)?

- Section 74(5) The person chargeable with tax may, **before service of notice** under sub-section (1), pay the amount of tax along with interest payable under section 50 and a **penalty equivalent to fifteen per cent. of such tax** 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. (DRC-03)
- Section 74 (6) The proper officer, on receipt of such information, **shall not serve any notice** under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder. (DRC-04)
- Section 74 (8) Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and **a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded..** (DRC-05).
- Section 74 (11) Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to **fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded..**

# Issue 2: Other Procedural and Substantive Issues

- **Section 96(3) of the CPC**
  - No appeal shall lie from a decree passed by the court with the consent of the parties
  - **Section 107(1) of the CGST Act** – Any person aggrieved ...
- **SECTION 78. of Finance Act, 1994** Penalty for failure to pay service tax for reasons of fraud, etc. —
  - Provided further that where service tax and interest is paid within a period of thirty days of
  - (i) the date of service of notice under the proviso to sub-section (1) of section 73, the penalty payable shall be fifteen per cent. of such service tax and proceedings in respect of such service tax, interest and penalty shall be deemed to be concluded;
  - (ii) the date of receipt of the order of the Central Excise Officer determining the amount of service tax under sub-section (2) of section 73, the penalty payable shall be twenty-five per cent. of the service tax so determined;
  - Provided also that the benefit of reduced penalty under the second proviso shall be available. only if the amount of such reduced penalty is also paid within such period.



# Issue 2: Other Procedural and Substantive Issues

## (III) WHETHER PENALTY UNDER SECTION 73 IS AUTOMATIC?

- Section 73 (9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a **penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher**, due from such person and issue an order..
- *Actus non facit reum nisi mens sit rea*”: An act is not wrongful unless accompanied by a wrongful state of mind.
- **Hindustan Steel Ltd. v. State of Orissa [(1969) 2 SCC 627]**: Held that liability to pay penalty does not arise merely upon proof of default. An order imposing penalty for failure to carry out a statutory obligation is a result of a quasi-criminal proceeding and **penalty will not ordinarily be imposed unless the party either acted deliberately in defiance of the law or was dishonest or acted in conscious disregard of its obligation. Even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to impose penalty if the breach flows from a bonafide belief.**

## Issue 2: Other Procedural and Substantive Issues

- **SECTION 126. General disciplines related to penalty. — (1)**
- No officer under this Act shall impose any penalty for **minor breaches of tax regulations or procedural requirements** and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.
- Explanation.—For the purpose of this sub-section,—
- (a) a breach shall be considered a ‘minor breach’ if the amount of tax involved is less **than five thousand rupees**;
- (2) The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach....
- (6) The provisions of this section **shall not apply** in such cases where the penalty specified under this Act is either **a fixed sum or expressed as a fixed percentage**.

## Issue 2: Other Procedural and Substantive Issues

HOWEVER, SUPREME COURT IN A CATENA OF DECISIONS HAS HELD THAT MENS REA IS NOT AN ESSENTIAL ELEMENT FOR IMPOSING PENALTY FOR BREACH OF CIVIL OBLIGATIONS:

- Director of Enforcement v. MCTM Corpn. (P) Ltd. : (SCC pp. 478 & 480-81, paras 8 & 12-13).
- J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers : (SCC p. 692, para 42)
- R.S. Joshi v. Ajit Mills Ltd. : (SCC p. 110, para 19)
- Gujarat Travancore Agency v. CIT : (SCC p. 55, para 4)
- SEBI v. Cabot International Capital Corpn. : (Comp Cas pp. 862 & 864-65, paras 47, 52 & 54)
- Chairman, SEBI v. Shriram Mutual Fund — 2006 (5) SCC 361
- UOI V. Dharamendra Textile 2008 (231) ELT 3 (S.C.)

# Issue 2: Other Procedural and Substantive Issues

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- **Bharjatiya Steel Industries v. Commissioner of Sales Tax UP [2008 (11) SCC 617]:** Held that if an assessing authority has the discretion not to levy penalty i.e. where a penalty is discretionary and not mandatory, existence of mens rea becomes a relevant factor.
- **Commissioner of Sales Tax, U.P. v. Sanjiv Fabrics [(2010) 35 VST 1]:** Held that in examining whether mens rea is an essential element for an offence created under a taxing statute, regard must be placed on:
  - The object and scheme of the statute
  - The language of the section
  - The nature of penalty
- Existence of mens rea is a must for offences made liable to prosecution.
- When the statute specifically incorporates such words which require presence of mens rea the presence of mens rea is mandatory.
- When the statute does not incorporate words which specifically indicate that mens rea is required the principle laid down in the case of Sanjiv Fabrics can be considered to determine whether mens rea is required or not.

# Issue 2: Other Procedural and Substantive Issues

- **(IV) Whether any time limit is applicable for the issuance of show cause notice u/s 76?**
  - **76.** (2) Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.
  - ...(6) The proper officer shall issue an order within one year from the date of issue of the notice..
  - M/s TVS Whirlpool Ltd., 2000 (119) ELT A177 (SC)
  - GOI Vs. Citedal Fine Pharmaceuticals 1989 (42) ELT 515 (SC)

# Issue 2: Other Procedural and Substantive Issues

- **(V) Exclusion of time period when issue is pending before higher forums.**
  - Section 75 (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 5[or sub-section (7) of section 74A] where proceedings are initiated by way of issue of a show cause notice under the said sections.

## Issue 2: Other Procedural and Substantive Issues

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- Whether the time limit to issue SCN also extended?
- Whether issue pending in assesses own case or in some other case?
- What mechanism should be followed by the department in such cases?

# Issue 2: Other Procedural and Substantive Issues

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## **(VI) When is cross examination required and when not?**

- When the contention can be proved with documentary evidence itself?
- When the cross examination is likely to further weaken the case?
- When the entire case of the department only based on statements?
- When the taxpayer's case is contradicting with that of the person whose statement has been recorded?
- Double edge sword. To be used very cautiously.

## **(VII) Whether proceedings under Section 73/74/74A of the CGST Act, 2017 can be initiated before the filing of annual return?**



# How to Draft Proper Responses

# Content of the Notices

- Metal forging Vs UOI 2022 (11) TMI 90 SC conditions for issuing proper notice
  - Proper format
  - Served within time
  - Not to be issued in routine manner
  - every communication is not SCN
  - Proposed demand should be specifically mentioned.
- Content of an ideal SCN.
  - Introduction of the case
  - Legal frame work
  - Factual statement and appreciation of evidences
  - Discussion, facts and legal frame work,
  - Discussion on Limitation
  - Calculation of duty and other amounts due
  - Statement of charges
  - Authority to adjudicate.
  - Time limit within which response it to be made
- Content or Fundamentals of Valid SCN.
  - Allegations should not be Vague
  - Unbiased and not with predetermined mindset

# Response to Show Cause Notice

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- Basic Checks:
  - Proper procedure followed delivery, DIN, consultation etc.
  - Keep proof of receipt of notice .
  - Jurisdiction of the officer.
  - Time limit
  - All annexures and All RUDs provided with SCN
  - Seek copies of non relied upon documents.
- Timely Filing response to SCN (Refund Cases especially); Seeking extension letters and hearing opportunity.
- Detailed discussion with client

# Response to Show Cause Notice (Cont.)

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- Ideal Flow of the response:
  - Detailed Facts
  - Submissions on Merits with most important ground first;
  - Quantification Grounds later
  - Submissions on Limitation and Penalty
- Alternate Vs Contradictory Grounds
- Presentation and Formatting; Quoting Extract of judgment, provisions.
- Quantify the tax effect and all relevant documents in order to enable AO to drop demand.
- Precise and to the point; Lengthy drafts to be avoided; Synopsis and Indexing must.
- Evidence building (Affidavits/Expert Certificates/C.A. Certificates/Sample of Products).
- Rebuttal to all Allegations in SCN; Para wise rebuttal in factual matters.
- Rebuttal to statements; Seek Cross Examination.
- Mention specifically that personal hearing required.
- Specific prayers

# Practical Challenges and Issues in Handling GST Appeals

# Nature of Appellate Remedies

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## Creature of Statute

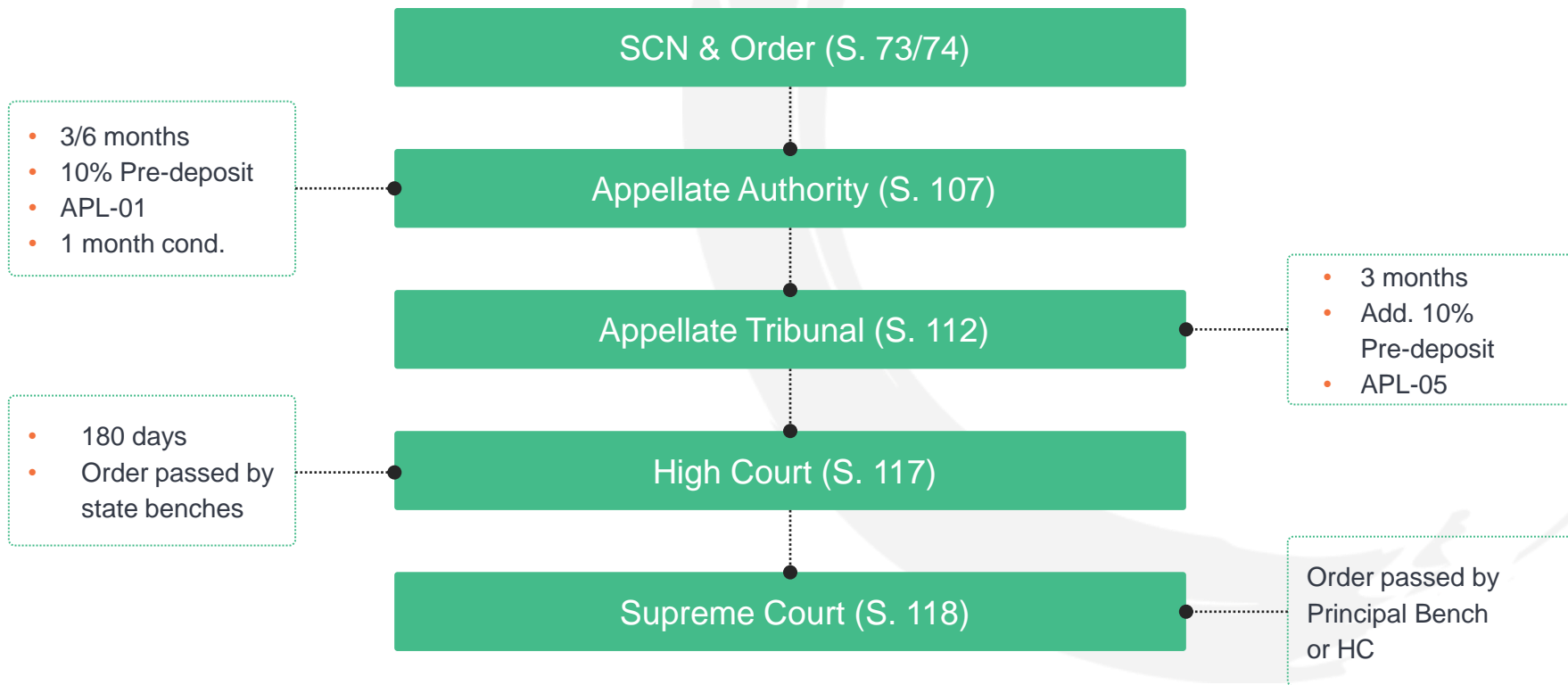
- **State of Maharashtra Vs. Mahboob S. Allibhoy -1996 (85) ELT 22 (SC)**

Not Guaranteed or a Constitutional Right

## Vested Right

- **Garikapatti Veerayya Vs. N Subbia Choudhary & Others (AIR 1957 SC 540)**

# Hierarchy of Appeal Under GST



# Issue 1: Specific Issues Related to Appeal

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ABC LLP is a practicing Chartered Accountants. They have encountered following issues relating to their clients in connection with filling of the appeals:

**Q.1** Who can file appeal?

Northern Plastic Ltd., 1997 (91) E.L.T. 502 (S.C.)

**Q.2** Whether an appeal against a letter can be filed?

**Q.3** Whether you can file appeal against adverse finding even though operative portion is in your favour? Similarly when finding is in favour but operative portion is adverse?

Jamshed Hormusji Wadia, 2004 (176) E.L.T. 24 (S.C.)

**Q.5** Any appeal lies against the oral orders.?

Pashupati Chemicals & Pharmaceuticals Ltd. vs. Asst. Collr. Of Customs 1993 (64) ELT 361

**Q.6** Whether any appeal lies against unsigned order?

Vipul Plastic Industries vs. Commr.. Of Customs, Mumbai 2002 (141) ELT 777



# Issue 1: Specific Issues Related to Appeal (Cont.)

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**Q.7** One of their clients is unable to upload the entire appeal memorandum and annexures due to limitation on the GST portal, what are the legal implications or remedial steps available to him?  
M/s BVD Power Private Limited, 2020-VIL-114-MAD

**Q.8** One of their clients failed to file appeal within the statutory condonable period.

- Singh Enterprises vs. CCE, 2008 (221) E.L.T. 163 –SC
- Flipcart internet 2023(12) TMI 419 –Pat HC.
- S.K. Chakraborty & Sons Vs Union of India - 2023 (12) TMI 290 - Calcutta High Court
- Axiom Gennext India Pvt Ltd. Vs. CTO WP no. 1114 of 2025.

## Issue 2: Pre-deposit

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**Q.9** One of their clients seeks clarity on the mode of making pre-deposit for filing an appeal under the CGST Act. Specifically, he wishes to know whether Input Tax Credit (ITC) can be utilized for this purpose.

- Oasis Reality 2022 (10) TMI 42 (Bom),
- F. No.CBIC-20001/2/2022-GST dated 6<sup>th</sup> July 2022
- Jyoti Construction [2021 (54) G.S.T.L. 279 (Ori.)
- Flipkart Internet Pvt Ltd. - [2023 (12) TMI 419] – Patna HC-stayed by SC.

**Q.10** Can the ITC available in Electronic Credit Ledger be used for making pre deposit in the following scenarios:

- RCM liability
- Recovery of erroneously sanctioned refund.

## Issue 2: Pre-deposit (Cont.)

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- Q.11** Whether Form DRC-03 can be validly used for making the pre-deposit required under Section 107 of the CGST Act.?
- CBIC has issued Instruction Number-240137/14/2022 dated 28<sup>th</sup> October 2022.
  - Manjunatha Oil Mill Vs AC 2024 (7) TMI 1154- Andhra HC
- Q.12** Can appeal be filed without making the pre-deposit? Does the GST portal allow filing of appeal applications without such pre-deposit being reflected?
- Nyati Hotels and Resorts Pvt Ltd Vs CCE – 2018 (364) ELT 1081 (Tri Mumbai)
- Q.13** Section 107 of the CGST Act requires a pre-deposit of 10% of the tax in dispute. If one of their client's appeal is limited to interest or penalty, is he still required to make any pre-deposit?
- Amendment Vide Section 129 of the FA-2025 from a date yet to be notified

## Issue 2: Pre-deposit (Cont.)

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- Q.14** Whether amount paid during the course of investigation can be adjusted against the pre deposit requirements?
- Notification No. 12/2024- CT dated 10.07.2024, vide which sub-rule (2B) of Rule 142 and FO RM GST DRC-03A has been inserted
- Q.15** In the current scenario, where the GST Appellate Tribunal is not constituted, when and how should the pre-deposit required for second appeals is to be paid?
- Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 03.12.2019.
  - Circular No. 224/18/2024 – GST Dated the 11<sup>th</sup> July 2024
- Q.16** Is GST registration mandatory to file an appeal and make the statutory pre-deposit under the CGST Rules? How to file appeal in personal penalty cases?
- Rule 87 (4)

## Issue 3: Forum Related Considerations

**Q.17** Single SCN issued to multiple distinct person by DGGI. Common adjudicating authority passed a common order. Where and how to file appeal against such orders? What will be the pre deposit requirements?

- **Section 6 (3)** Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act **shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.**
- Notification No. 2/2017- CT-19<sup>th</sup> June 2017.  
4. The Commissioners of Central Tax (Appeals) and <sup>4</sup>[any officer not below the rank of Joint Commissioner (Appeals)] specified in column (2) of Table III and the central tax officers subordinate to them are hereby vested with the territorial jurisdiction of the Principal Commissioners of Central Tax or the Commissioners of Central Tax, as the case may be, specified in the corresponding entry in column (3) of the said Table.

**Q.18** One of their clients had filed appeal before the wrong forum and now the limitation period has already been expired including condonable period. What is the available remedy now ?

# Check List for Appeal

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## CHECKLIST

- Check whether the order is appealable?
- Where is the appellate authority located?
- When does limitation expire for filing the appeal?
- If it has expired is there a provision for condonation?
- Has affidavit for condonation been prepared giving proper reasons?

## Check List for Appeal (Cont.)

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- Pre deposit requirements and mode of payment.
- Filing mode- Online or offline
- Additional Evidence - Rule 112
- In case of any doubts and time is still available for compliance?

# Q & A



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FOR ANY SUPPORT OR INFORMATION WRITE TO:

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exceeding expectations