

APPEALS UNDER GST

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What is appeal and why it is needed?

- The Taxpayers are required to comply with the obligations issued under GST laws. The obligations can be broadly divided into 2 categories, such as:
 - Tax-related obligations and
 - Procedure-related obligations
- To ensure the compliance of aforesaid obligations, the tax officer may conduct **scrutiny audit or anti-evasion, etc...**, In such cases, there may be a situation of actual or perceived non-compliance. If the difference in view continues, it shall result in a dispute, which then required to be resolved.
- The Taxpayer and the tax officer may have different opinions and viewpoints on respective facts and laws and the taxpayer may not agree with the “adjudication order” passed by the tax officer and It is equally possible that the Department may itself not be in agreement with the adjudication order in some cases, that’s the reasons for which the statute has provided further channels of appeal, to both sides.

Sections

107. Appeals to Appellate Authority
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110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.
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Rules

108. Appeal to the Appellate Authority
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113. Order of Appellate Authority or Appellate Tribunal
114. Appeal to the High Court
115. Demand confirmed by the Court
116. Disqualification for misconduct of an authorised representative

Who can file an appeal?

Any person who is aggrieved by a **decision or order** passed against him by a authority can file an appeal to its superior Authority.

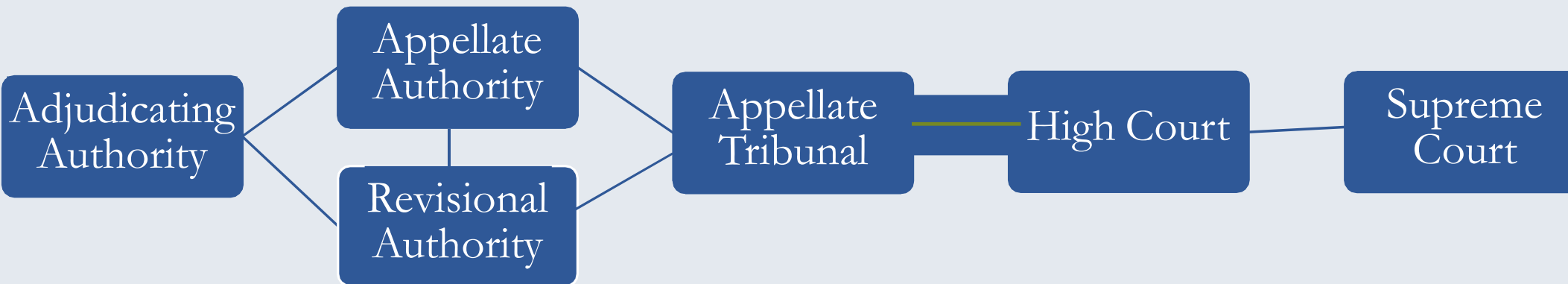
However, no appeals shall be filed against the following orders:

- an order passed by the Commissioner or other authority empowered to direct **transfer of proceedings from one officer to another officer**;
- an order passed to pertain **the seizure or retention of books of account, register, and other documents**; or
- an order passed to **sanction prosecution under the Act**; or
- an order passed under the **provisions of section 80-payment of tax installments**.

What are the levels of appeal under GST

Appeal level	Section No	Order passed by	Appeal to
Level-I	107	Adjudicating authority	Appellate authority
Level-II	109,110	Appellate authority	Appellate Tribunal
Level-III	111-116	Appellate Tribunal	High Court
Level-IV	117-118	High Court	Supreme Court

STEPS OF APPEAL UNDER GST



What is the time limit prescribed to file an Appeal?

- Time limit to file an appeal before the Appellate Authority- the aggrieved person has to file an appeal within 3 months from the date of communication of order or decision.
- Time limit to file an appeal before the tribunal- the aggrieved person has to file an appeal before the tribunal within 3 months from the date of receipt of the order appealed against.
- Time limit to file an appeal before High court- the aggrieved person has to file an appeal before High court within 180 days from the date of receipt of the order appealed against. **However, on the occasion of producing sufficient cause, the High Court may condone the further delay.**

What is the concept of pre-deposit?

- To discourage the frivolous appeals and to safeguard the bonafide interests of both taxpayer and the revenue, the GST law requires the appellant to pre-deposit the amount of tax, interest, fine, fee and penalty in full, as is admitted by him, arising from the impugned order and
- a sum equal to 10% of the disputed amount but maximum up to 25 Crore in each CGST Act and SGST Act and if the appeal is being filed under IGST Act then up to 50 crores (in case of appeal before appellate authority)
- and 20% of the disputed amount but maximum up to Rs.50 crore in CGST Act and SGST Act and if the appeal is being filed under IGST Act then up to 100 crores (in case of appeal before tribunal.)

Appeals to Appellate Authority – Sec 107

To be filed within **3 months** of the decision or order is communicated (**6 months** for Dept. a
Condonation allowed by upto 1 month.

Pre-deposit **10%** of the disputed amount + 100% of undisputed amount

Appeal to be filed in form **APL-01/ APL-03**.

Hard copy in triplicate with Certified copy of Order and supporting docs to be submitted w
days of appeal.

Recovery proceedings deemed stayed, once the appeal filed and amount of pre-deposit paid

Maximum 3 adjournments allowed SEC 107(9)

Additional evidences, other than already produced to Adjudicating Authority, not entertained

Appellate Authority **can't** refer the matter back to Adjudicating Authority

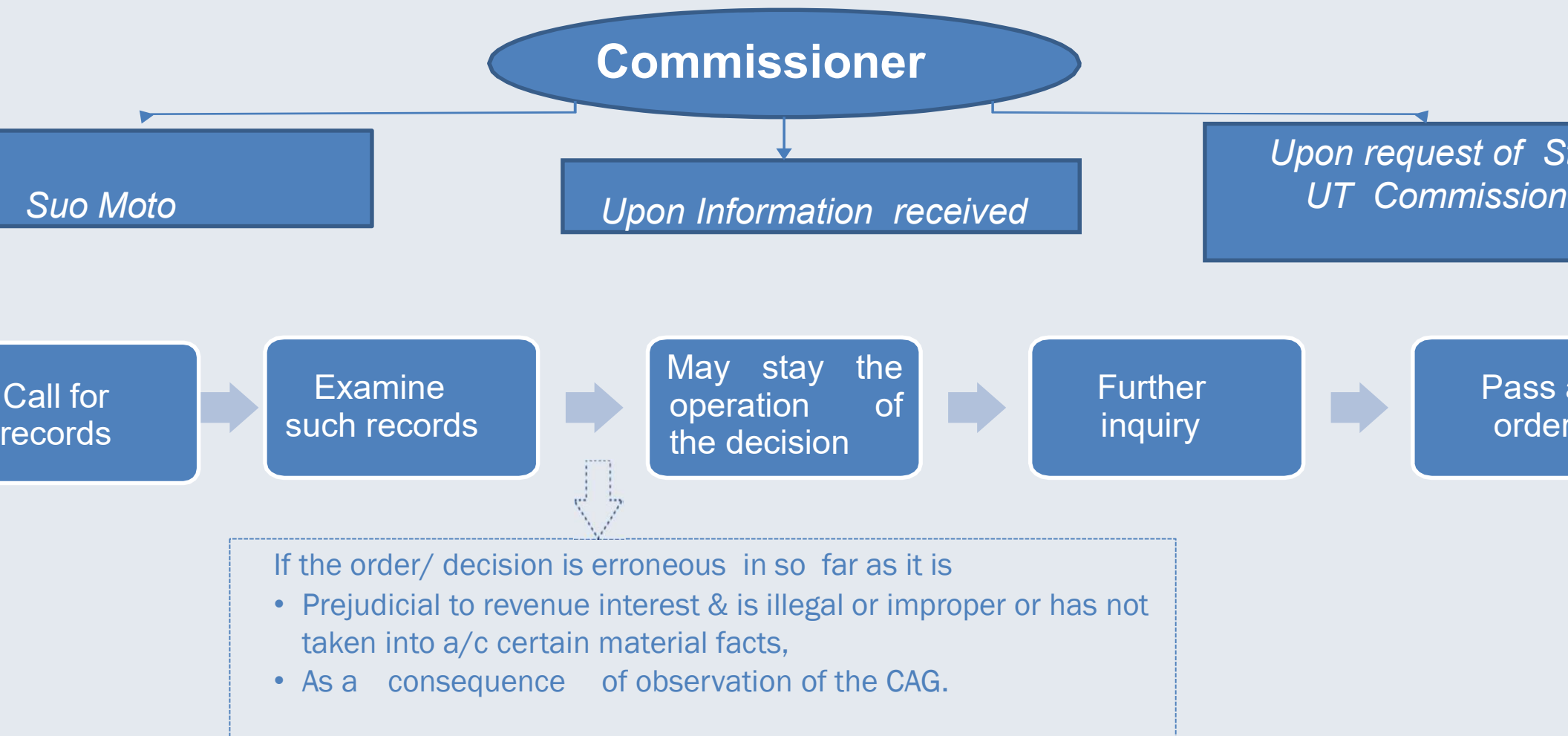
Enhancement of penalty/ fine or reducing refund/ credit not to be passed unless appellan
reasonable opportunity

Appellate Authority to hear and pass the order **within 1 year in form APL-04**.

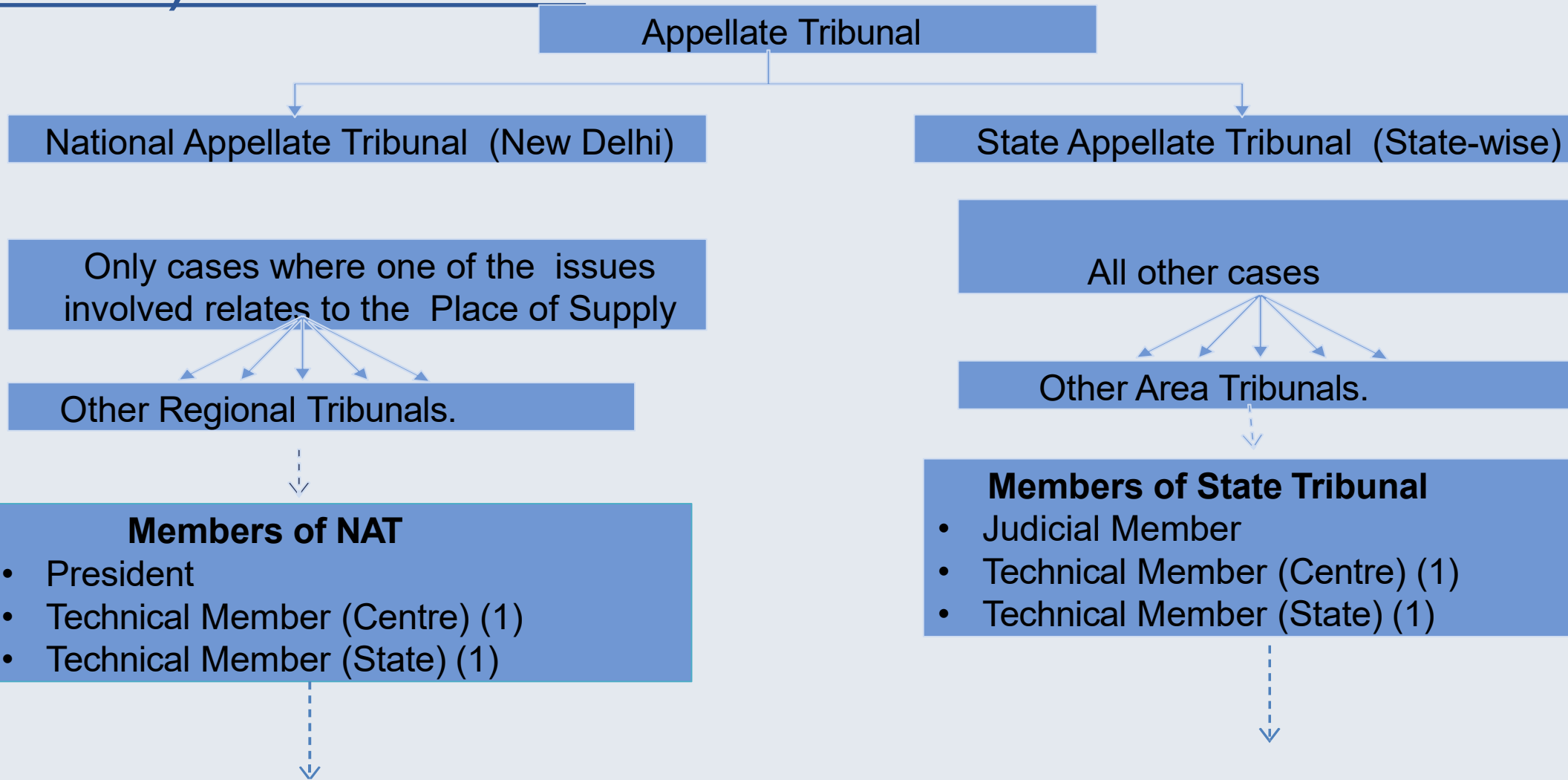
Opportunity of Being heard- Section 107(8) .

SPEAKING ORDER. The order of the Appellate Authority disposing of the appeal shall be in
and shall state the points for determination, the decision thereon and the reasons fo
decision.- Section 107(12)

REVISIONAL AUTHORITY (SEC. 108)



GOODS & SERVICES TAX APPELLATE TRIBUNAL (STAT) – SEC. 109





Members of Regional Appellate Tribunals

- Judicial Member
- Technical Member (Centre) (1)
- Technical Member (State) (1)

Jurisdiction

•Appeals against order of the Appellate & Revisional Authority.

AND

•Cases where one of the issues involved is **Place of Supply**



Members of Area Tribunals

- Judicial Member
- Technical Member (Centre) (1)
- Technical Member (State) (1)

Senior most State Judicial Member – President

Jurisdiction

•Appeals against order of the Appellate & Revisional Authority.

AND

•Cases **other than those** where one of the issues involved is **Place of Supply**

All cases to be heard by bench of 2 members, except cases not involving question of law or tax/ ITC/ penalty/ fine /fee does not exceed 5 lakhs than by single member.`

Madras HC In the matter of Revenue bar association vs union of India in his judgment dated 20-09-2019 has decided that the Composition of GST Appellate Tribunal is unconstitutional; Tribunals which primarily decide disputes between State and citizens cannot be run by a majority consisting of non-judicial members

Issues in the Writ petition

It is to the vires of Section 110 (1) (b) of the CGST Act on the ground of exclusion of lawyers from being eligible to be appointed as a Judicial Member of the Tribunal. The exclusion of lawyers from the zone of consideration as a Judicial Member is violative of Article 14 of the Constitution of India. Advocates are eligible to be considered as members of various tribunals and there is no justification or reason as to why they should be excluded from the zone of consideration of being appointed as Judicial members under the CGST Act and TNGST Act. There has been no valid explanation as to why the CGST Act, 2017 and TNGST Act, 2017 exclude Advocates having more than 10 years of experience, from being considered as Judicial Members of the Tribunal.

Challenge to the consideration of a Member of the Indian Legal Services who is eligible for being appointed as a member of the Appellate Tribunal has also been placed.

It is in respect to the Composition of the Appellate Tribunal.

Qualification of Members – Sec 110(1)

✓ Criteria for Appointment

■ President

- Judge of the Supreme Court or
- is or has been the Chief Justice of a High Court, or
- is or has been a Judge of a High Court for a period not less than five years;

■ Judicial Member

- Judge of the High Court; or
- is or has been a District Judge qualified to be appointed as a Judge of a High Court; or
- is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years.

Qualification of Members – Sec 110(1)

✓ Technical Member (Centre)

- he is or has been a member of Indian Revenue (Customs and Central Excise) Service Group A, and
- Has completed at least fifteen years of service in Group A;

➤ Technical Member (State)

- he is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with atleast three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

Appointment of Members – Sec 110(2) to (7)

- ✓ The President and the Judicial Members of the National Bench and the Regional Benches - Government after consultation with the Chief Justice of India or his nominee.
- ✓ Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches - Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.
- ✓ Judicial Member of the State Bench or Area Benches - State Government after consultation with the Chief Justice of the High Court of the State or his nominee
- ✓ Technical Member (Centre) of the State Bench or Area Benches - Central Government and Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government

Terms of Employment of Members – Sec 110(8) to (17)

- The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed.
- The President of the Appellate Tribunal shall hold office for a term of **three years** from the date on which he enters upon his office, or until he attains the age of **seventy years**, whichever is earlier and shall be eligible for reappointment.
- The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of **three years** from the date on which he enters upon his office, or until he attains the age of **sixty-five years**, whichever is earlier and shall be eligible for reappointment.
- The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of **five years** from the date on which he enters upon his office, or until he attains the age of **sixty-five years**, whichever is earlier and shall be eligible for reappointment.

Terms of Employment of Members – Sec 110(8) to (17)

- ✓ The President, State President or any Member may by notice to the Central Government or, as the case may be, the State Government resign from his office.
- ✓ However the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government, or, as the case may be, the State Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.
- ✓ **Removal of members**
 - The Central Government may, after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench, Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member who

Terms of Employment of Members – Sec 110(8) to (17)

- (a) has been adjudged an insolvent; or
- (b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or
- (c) has become physically or mentally incapable of acting as such President, State President or Member; or
- (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member; or
- (e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard

Terms of Employment of Members – Sec 110(8) to (17)

- ✓ The President or a Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given an opportunity of being heard. In this case the Central Government with concurrence of the Chief Justice of India may suspend the concerned member.
- ✓ The Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehavior or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard. In this case the State Government with concurrence of the Chief Justice of High Court may suspend the concerned member

Terms of Employment of Members – Sec 110(8) to (17)

- Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.

Procedure before Appellate Tribunal – Sec 1

- ✓ *The Appellate Tribunal shall not be bound by the procedure laid down in the code of Civil Procedure, 1908, but shall be guided by the Principles of Natural Justice and, subject to the provisions of this Act, shall have the power to regulate its own procedure.*
- ✓ *The Appellate Tribunal shall have the same powers as are vested in Civil Court, when trying a suit in respect of the following matters:-*
 - *Summoning and enforcing the attendance of any person and examining him on oath*
 - *Requiring the discovery and production of documents*
 - *Receiving evidence on affidavit*
 - *Requisitioning any public record or a document or a copy thereof*
 - *Issuing commissions for the examination of witnesses or documents*
 - *Dismissing a representation or deciding it ex-parte*
 - *Setting aside any order of dismissal of representation for default or any order passed by it ex-parte*
 - *Any other matter which may be prescribed*

Procedure before Appellate Tribunal – Sec 1

- ✓ An order passed by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court and it shall be lawful for the Appellate Tribunal to send for the execution of its orders to the Court within the local limits of whose jurisdiction :
 - in case of an order against the company: the registered office of the company situated
 - In case of the order against any other person: the person concerned voluntarily resides or carries on business or personally works for gain
- ✓ All the proceedings before the appellate tribunal shall be deemed to be judicial proceedings and Appellate tribunal shall be deemed to be civil court

Appeals To Appellate Tribunal – Sec 112

- To be filed **within 3 months** of the order (**6 months** for Dept. appeal). Condo allowed upto 3 months.
- To be filed in form **APL-05** together with prescribed fee (**Rs. 1000** per lac of tax credit or difference of tax and tax credit or amount of fine as per order, subject to max Rs. 25,000/-)
- Deptt. to file appeal in form **APL-07 without fee**
- No fee for application made for rectification of errors in Order
- Pre-deposit additional **20% of the disputed amount** (over and above amount deposited at the time of appeal to Appellate Authority)
- Recovery proceedings deemed stayed once the appeal filed and amount paid

Appeals To Appellate Tribunal – Sec 112

- Tribunal may refuse to admit petty appeals where the monetary value involved doesn't **exceed Rs. 50,000**
- Upto **3 adjournments** allowed
- Tribunal to hear and **decide the appeal within 1 year of filing**
- Enhancement of penalty/ fine or reducing refund/ credit not to be passed unless **appellant given reasonable opportunity**
- Tribunal may **confirm, modify or annul the order** appealed against.
- Can **remand the matter** to the lower authorities
- Statement indicating final demand will be issued in form APL-04

Orders of Appellate Tribunal – Sec 113

- ✓ The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit
- ✓ **Adjournment: Maximum Three**
- ✓ The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, within a period of three months from the date of the order:
- ✓ Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made, without giving an opportunity of being heard.

Orders of Appellate Tribunal – Sec 113

- ✓ The Appellate Tribunal shall, as far as possible, hear and decide every **appeal within a period of one year** from the date on which it is filed.
- ✓ The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner or the Commissioner of State tax or the Union territory tax.
- ✓ Orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

Production of Additional Evidence Before the Appellate Authority or Appellate Tribunal

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate 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, before the Appellate Authority except in the following circumstances, namely:-

(a) where the adjudicating authority or, as the case may be, the Appellate Authority **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 was **called upon to produce by the adjudicating authority** or, as the case may be, the Appellate Authority; or

(c) where the appellant **was prevented by sufficient cause** from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence **which is relevant to any ground of appeal**; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made an order appealed against **without giving sufficient opportunity** to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity –

- (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
- (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

Financial and administrative powers of President – Sec 114

- ✓ The President shall exercise such financial and administrative powers over National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:
- ✓ Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to function under the direction, control and supervision of the President.

Interest on refund of amount paid for admission of appeal – Sec 115

- Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 (6%) shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

Appeal to the High Court- Sec-117

- To hear order passed by State/Area Bench of Appellate Tribunal
- Appeal to be filed within 180 days of the order received in form APL-08
- Admission, only if the case involves substantial question of law
- Hearing only around the question of legal provision of law challenged
- Case to be heard by bench consisting of at least 2 judges
- In case of difference of opinion amongst the judges, additional judges may be called to hear the case
- Provisions of Code of Civil Procedure relating to appeals to the High Court shall apply in the case of appeals.

Appeal to Supreme Court – Sec 118

To Supreme Court

- 1. Order Passed By the National Bench or Regional Bench of the Appellate Tribunal OR
- 2. Judgment of High Court under section 117J

Code of Civil Procedure

- The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court

Judgment - Varied / Reversed

- Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.

Sums due to be Paid, notwithstanding appeal etc – Sec 119

- The sum dues to the –Government in accordance with an order passed by:-
 - *The National, Regional State Bench or Area Bench or*
 - *High Court*

Shall be payable notwithstanding that an appeal has been preferred to High Court or Supreme Court

Appeals not to be filed in certain cases – Section 120

- On recommendation of Council, the Board may issue order or instructions or directions fixing monetary limits for the purpose of regulating the filing of appeal or application by Officer of central tax.
- In case the Officer has not filed an appeal / application against any decision / order in view of such order / instruction / directions, it shall not preclude him from filing appeal or application in any other cases involving same / similar issue or question of law.
- No party in appeal / application shall contend that the Officer has acquiesced (agreed or consented) in the decision on the disputed issue by not filing an appeal / application.
- The Appellate Tribunal or court hearing such appeal / application shall have regard to the circumstances under which appeal / application was not filed by the Officer in pursuance of such order / instructions / directions.

Non Appealable decisions and orders – Sec 121

In following matters, no appeals shall lie against any decision taken or order passed:-

- – Transfer of proceeding from one officer to another officer;
- – Seizure or retention of books of account, register and other documents;
- – Order sanctioning prosecution under the Act
- – Order passed U/s 80 related to payment of tax & other amount in installments.

SUMMARY OF FORMS

Sl. No.	Particulars	Form no.	Time Limit
1	Appeal to prescribed Appellate Authority by assessee	GST APL-01	Within 3 months from date of receipt of order
2	Final Acknowledgement indicating Appeal No.	GST APL-02	After filing of certified copy of the decision or order
3	Department Appeal	GST APL -03	Within 6 months from date of receipt of order
4	Summary of the Order	GST APL-04	Maximum within 1 year
5	Appeal to Appellate Tribunal by assessee	GST APL-05	Within 3 months from dt of receipt of order
6	Department Appeal to Tribunal	GST APL-07	Within 6 months from dt of receipt of order
7	Cross Objection by opposition party	GST APL-06	within 45 days

Thank You

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