




GST TRIBUNAL

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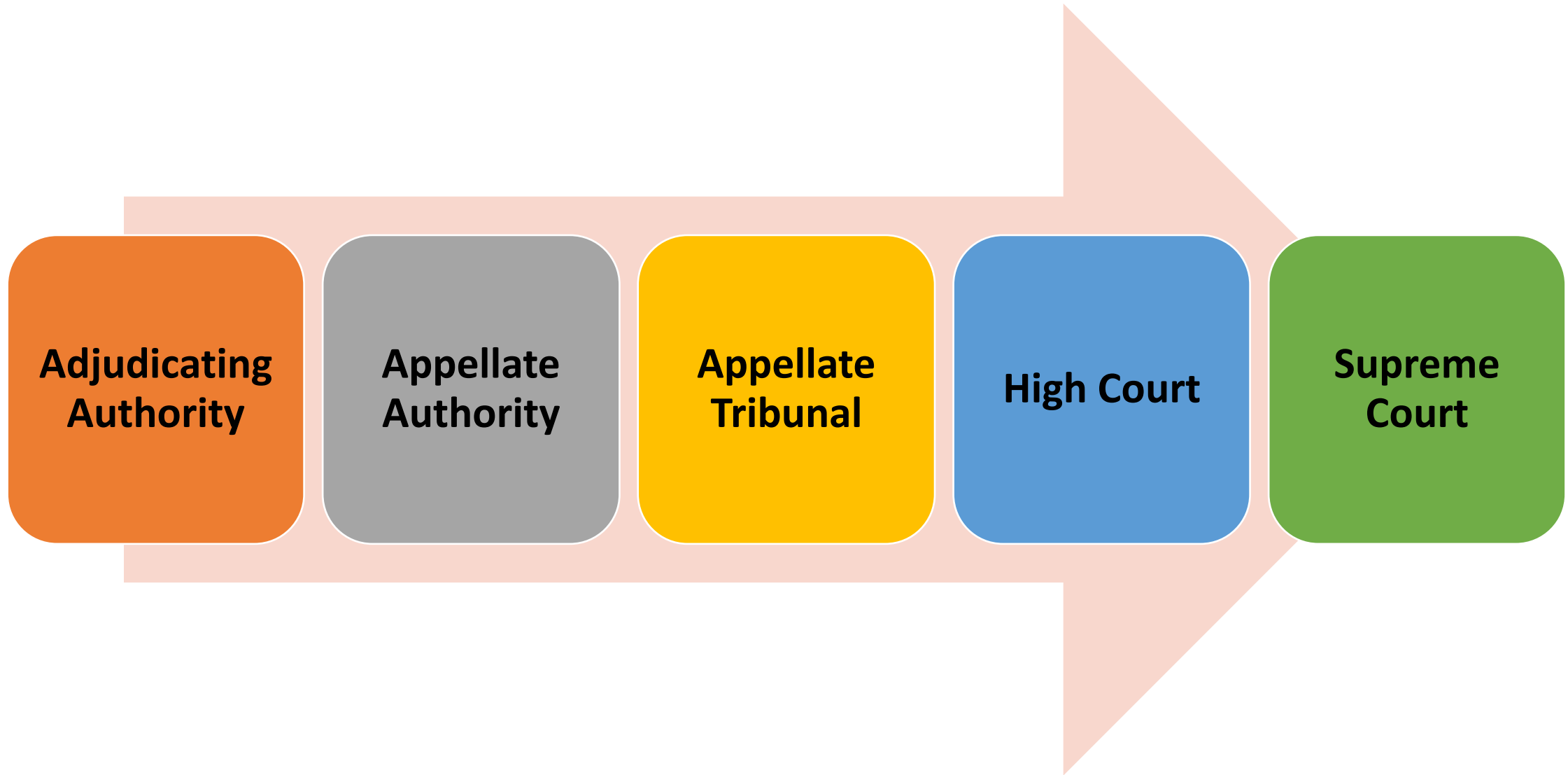
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LITIGATION FLOW IN GST



FIRST APPEAL PROVISION – SEC 107

▪ TIME LIMIT FOR TAXPAYER:

- Any person aggrieved by any decision or order passed by an adjudicating authority may appeal to such Appellate Authority (AA)
- **within Three months** from the date on which the said decision or order is communicated to such person.

▪ TIME LIMIT FOR DEPARTMENT:

- The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax,
- call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order,
- for the purpose of satisfying himself as to the legality or propriety of the said decision or order and
- may, by order, direct any officer subordinate to him to apply to the Appellate Authority **within Six months** from the date of communication of the said decision or order for the determination of such points.

FIRST APPEAL PROVISION – SEC 107

- **DELAY CONDONATION:**
 - The Appellate Authority (AA) may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be,
 - allow it to be presented within **a further period of one month.**

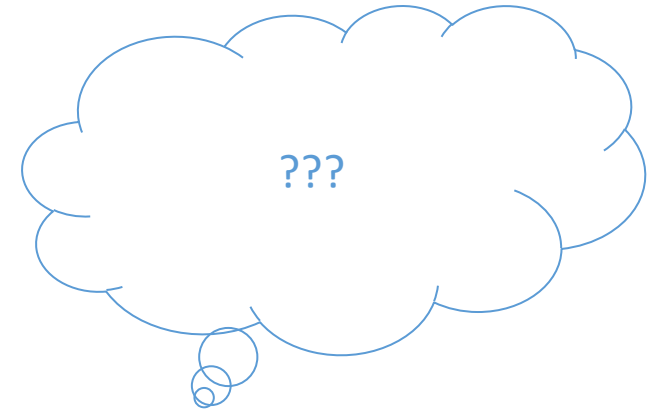
- **TAX DEPOSIT OF ADMITTED LIABILITY AND PRE DEPOSIT:** No appeal shall be filed, unless appellant has paid—
 - (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) **a sum equal to 10% of the remaining amount of tax in dispute** arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.

- **DEEMED STAY FROM RECOVERY ON PAYMENT OF TAX ADMITTED AND PRE-DEPOSIT:** Where the appellant has paid the TAX ADMITTED AMOUNT AND PRE DEPOSIT, the **recovery proceedings for the balance amount shall be deemed to be stayed.**

FIRST APPEAL PROVISION – SEC 107

- **Opportunity of Being Heard** - Appellate Authority shall give an opportunity to the appellant of being heard
- **Adjournment of Hearing** – AA shall, if sufficient cause is shown, adjourn the hearing for reasons to be recorded in writing. **No such adjournment shall be granted for more than 3 times** to a party.
- **Additional Grounds of Appeal** - The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.
- **NO POWER TO REMAND BACK:** The Appellate Authority shall pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order
- **Speaking Order** – The order of the Appellate Authority disposing of the appeal shall be **in writing** and shall **state the points for determination**, the decision thereon and **the reasons for such decision**.
- **Time limit of determination to authority** - The Appellate Authority shall, where it is possible to do so, hear and decide every appeal **within a period of one year** from the date on which it is filed.

PHYSICAL
SUBMISSION OF
APPEAL IS
REQUIRED ??



FIRST APPEAL PROVISION – Rule 108

- **Form of Appeal** - An appeal to the Appellate Authority shall be filed in **FORM GST APL-01** electronically and **provisional acknowledgement** shall be issued to the appellant immediately

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|--|--|
| Where the decision/order appealed against is uploaded on GST Portal | <ul style="list-style-type: none">➔ Final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority and➔ the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal. |
|--|--|

| | |
|---|--|
| where the decision / order appealed against is not uploaded on GST portal, | <ul style="list-style-type: none">➔ Appellant shall submit a self-certified copy of the said decision / order within a period of 7 days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority and➔ the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.➔ where the said self-certified copy of the decision/ order is not submitted within a period of 7 days from the date of filing of FORM GST APL-01, the date of submission of such copy shall be considered as the date of filing of appeal. |
|---|--|

- **Explanation** - For the provisions of this rule, **the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.**

FIRST APPELLATE AUTHORITY – Rule 109A

- **Who is Appellate Authority** - Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to—

IN CASE OF CGST AUTHORITY

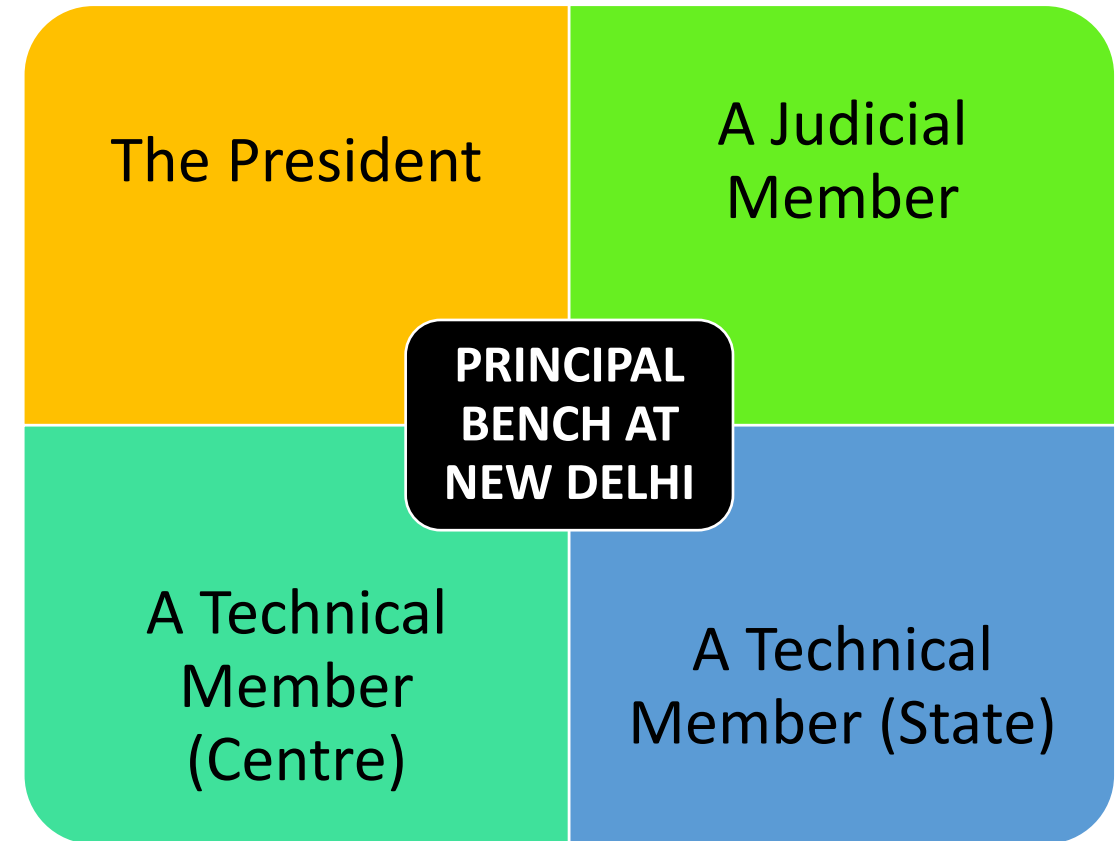
- The Commissioner (Appeals)** → where such decision or order is passed by the Additional or Joint Commissioner;
- any officer not below the rank of Joint Commissioner (Appeals)** → where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent

IN CASE OF SGST AUTHORITY – Maharashtra State

- The Joint Commissioner (Appeals)** → where such decision or order is passed by the Deputy Commissioner;
- The Deputy Commissioner (Appeals)** → where such decision or order is passed by the Assistant Commissioner or State Tax Officer

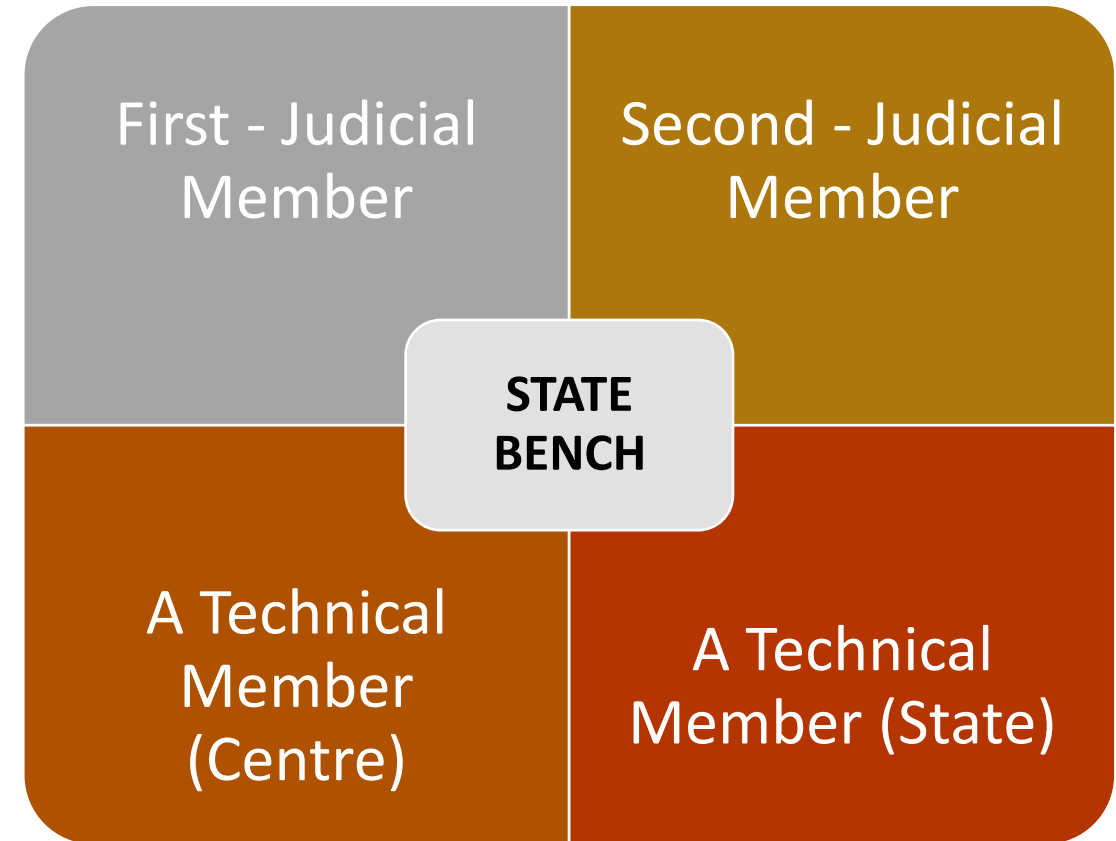
CONSTITUTION OF APPELLATE TRIBUNAL– SEC 109

- **GSTAT:** Goods and Services Tax Appellate Tribunal will hear appeals against the orders passed by
 - ✓ the Appellate Authority or
 - ✓ the Revisional Authority.
- **PRINCIPAL BENCH AT NEW DELHI:** The Government shall, by notification, constitute a Principal Bench of the Appellate Tribunal at New Delhi which shall consist of
 - ✓ the President,
 - ✓ a Judicial Member,
 - ✓ a Technical Member (Centre) and a Technical Member (State)



CONSTITUTION OF APPELLATE TRIBUNAL- SEC 109

- **STATE BENCH:** On the request of the State, the Government may, by notification, constitute such number of State Benches at such places and with such jurisdiction as may be recommended by the Council, which shall consist of
 - ✓ Two Judicial Members,
 - a Technical Member (Centre) and a Technical Member (State).



CONSTITUTION OF APPELLATE TRIBUNAL– SEC 109

- **ISSUE OF PLACE OF SUPPLY WILL BE HEARD BY PRINCIPAL BENCH:** The cases in which any one of the issues involved relates to the place of supply, shall be heard only by the Principal Bench.
- **TRANSFER FROM ONE BENCH TO ANOTHER BENCH:** The President shall, by order, distribute the business of the Appellate Tribunal among the Benches and may transfer cases from one Bench to another
- **VICE PRESIDENT OF STATE BENCH:** The senior-most Judicial Member within the State Benches, as may be notified, shall act as the Vice-President for such State Benches and shall exercise such powers of the President as may be prescribed, but for all other purposes be considered as a Member.

CONSTITUTION OF APPELLATE TRIBUNAL– SEC 109

- **WHEN APPEAL TO BE HEARD BY SINGLE MEMBER OR TWO MEMBER :** Appeals,
 - ✓ where the tax or ITC involved or the amount of fine, fee or penalty determined in any order appealed against, “does not exceed Rs 50 lakhs and which does not involve any question of law may”, with the approval of the President, and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a single Member, and
 - ✓ in all other cases, shall be heard together by one Judicial Member and one Technical Member.

CONSTITUTION OF APPELLATE TRIBUNAL– SEC 109

- **DIFFERENCE IN OPINION AMONG MEMBER OF BENCH:** If, after hearing the case, the Members differ in their opinion on any point or points, such Member shall state the point or points on which they differ, and the President shall refer such case for hearing,—
 - a) where the appeal was originally heard by Members of a State Bench, to another Member of a State Bench within the State or, where no such other State Bench is available within the State, to a Member of a State Bench in another State;
 - b) where the appeal was originally heard by Members of the Principal Bench, to another Member from the Principal Bench or, where no such other Member is available, to a Member of any State Bench,

QUALIFICATION, APPOINTMENT, CONDITIONS OF APPELLATE TRIBUNAL– SEC 109



■ QUALIFICATION:

- ✓ **President**: Unless he is - Judge of the Supreme Court or is or has been the Chief Justice of a High Court

- ✓ **Judicial Member**: unless he
 - i. has been **judge of the High Court**; or
 - ii. has for a combined period of **ten years, been a District Judge** or an Additional District Judge;
 - iii. has been an **advocate for 10 years with substantial experience in litigation** in matters relating to indirect taxes in the Appellate Tribunal, CESTAT, State VAT Tribunal, by whatever name called, HC or SC

- ✓ **Minimum Age Requirement**: a person who has not completed the age of **50 years** shall not be eligible for appointment as the President or Member



▪ QUALIFICATION:

- ✓ Technical Member (Centre), unless he - is or has been a member of **the Indian Revenue (Customs and Indirect Taxes) Service, Group A**, or of the All India Service with at least three years of experience in the administration of an existing law or goods and services tax in the Central Government, and has completed at least twenty-five years of service in Group A
- ✓ Technical Member (State), unless he - is or has been an **officer of the State Government or an officer of All India Service, not below the rank of Additional Commissioner** of Value Added Tax or the State goods and services tax or such rank, not lower than that of the First Appellate Authority, as may be notified by the concerned State Government, on the recommendations of the Council and has completed twenty-five years of service in Group A, or equivalent, with at least three years of experience in the administration of an existing law or the goods and services tax or in the field of finance and taxation in the State Government

▪ **TENURE:**

- ✓ President of the Appellate Tribunal shall hold office for a term of 4 years from the date on which he enters upon his office, or until he attains the age of 70 years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding 2 years subject to the age-limit specified above

- ✓ Judicial Member, Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of 4 years from the date on which he enters upon his office, or until he attains the age of 67 years, whichever is earlier and shall be eligible for re-appointment for a period not exceeding 2 years subject to the age-limit specified above

APPEALS TO APPELLATE TRIBUNAL– SEC 112

▪ TIME LIMIT FOR TAXPAYER:

- Any person aggrieved by an order passed against him u/s 107 or 108 may appeal to the Appellate Tribunal against such order
- within ***within Three months** from the date on which the order sought to be appealed against is communicated to the person preferring the appeal

The Appellate Tribunal may, in its discretion, refuse to admit appeal where the tax or ITC involved or the difference in tax or ITC involved or the amount of fine, fee or penalty determined by such order, does not exceed Rs 50,000/-

* The start of "three months period" u/s 112(1), shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

- Vide CGST (Ninth Removal of Difficulties) Order, 2019 issued under C.B.I. & C. Order No. 9/2019-C.T., dated 3.12.2019.

APPEALS TO APPELLATE TRIBUNAL– SEC 112

▪ TIME LIMIT FOR DEPARTMENT:

- The Commissioner may, on his own motion, or upon request from the Commissioner of State tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority for the purpose of satisfying himself as to the legality or propriety of the said order and
- may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal ***within six months** from the date on which the said order has been passed for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

* The start of "Six months period" u/s 112(3), shall be considered to be the later of the following dates:-

(i) date of communication of order; or

(ii) the date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

- Vide CGST (Ninth Removal of Difficulties) Order, 2019 issued under C.B.I. & C. Order No. 9/2019-C.T., dated 3.12.2019.

APPEALS TO APPELLATE TRIBUNAL– SEC 112

■ MEMORANDUM OF CROSS OBJECTION:

- On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred **may**,
- notwithstanding that he may not have appealed against such order or any part thereof, **file**,
- **within 45 days of the receipt of notice**, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).



APPEALS TO APPELLATE TRIBUNAL– SEC 112

- **DELAY CONDONATION FOR TAXPAYER:**
 - ✓ Appellate Tribunal may admit an appeal **within 3 months** after the expiry of period referred u/s 112(1), or
 - ✓ permit the filing of memorandum of cross-objections **within 45 days** after the expiry of period u/s112(5)
 - ✓ if it is satisfied that there was sufficient cause for not presenting it within that period.

- **FORM/VERIFICATION/FEEES:** An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed



APPEALS TO APPELLATE TRIBUNAL– SEC 112

- **TAX DEPOSIT OF ADMITTED LIABILITY AND PRE DEPOSIT:** No appeal shall be filed, unless appellant has paid—
 - (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
 - (b) **a sum equal to 20% of the remaining amount of tax in dispute**, in addition to the amount paid under Section 107(6), arising from the said order, subject to a maximum of fifty crore rupees, in relation to which the appeal has been filed.

- **DEEMED STAY FROM RECOVERY ON PAYMENT OF TAX ADMITTED AND PRE-DEPOSIT:** Where the appellant has paid the TAX ADMITTED AMOUNT AND PRE DEPOSIT, the **recovery proceedings for the balance amount shall be deemed to be stayed** till the disposal of appeal.

- **APPEAL FEES:** Every application made before the Appellate Tribunal,-
 - (a) in an appeal for rectification of error or for any other purpose; or
 - (b) for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed.

ORDER OF APPELLATE TRIBUNAL– SEC 113

- **POWER TO REMAND BACK** : The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against 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, for a fresh adjudication or decision after taking additional evidence, if necessary.
- **ADJOURNMENT**: The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing. Provided that no such adjournment shall be granted more than 3 times to a party during hearing of the appeal.

ORDER OF APPELLATE TRIBUNAL– SEC 113

- **RECTIFICATION OF ERROR** : 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, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of 3 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 under this sub-section, unless the party has been given an opportunity of being heard.

- **DISPOSABLE WITHIN ONE YEAR:** 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

PROCEDURE OF APPEAL TO APPELLATE TRIBUNAL– RULE 110

- **FORM OF APPEAL AND PROVISIONAL ACKNOWLEDGEMENT** : An appeal to the Appellate Tribunal under Section 112(1) shall be filed along with the relevant documents either electronically or otherwise as may be notified by the Registrar, in FORM GST APL-05, on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.
- **FORM OF MEMORANDUM OF CROSS-OBJECTIONS** : A memorandum of cross-objections to the Appellate Tribunal under Section 112(5) shall be filed either electronically or otherwise as may be notified by the Registrar, in FORM GST APL-06.
- **FEES FOR APPEAL:** The fees for filing of appeal or restoration of appeal shall be **Rs 1,000/- for every one lakh rupees** of 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 the order appealed against, **subject to a maximum of Rs 25,000/-**

PROCEDURE OF APPEAL TO APPELLATE TRIBUNAL– RULE 110

- **CERTIFIED COPY OF ORDER AND FINAL ACKNOWLEDGEMENT :**
- ✓ A certified copy of the decision or order appealed against along with fees as specified in sub-rule (5) shall be submitted to the Registrar within seven days of the filing of the appeal under sub-rule (1) and a final acknowledgement, indicating the appeal number shall be issued thereafter in FORM GST APL-02 by the Registrar:
- ✓ Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-05, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.
- ✓ The appeal shall be treated as filed only when the final acknowledgement indicating the appeal number is issued.

- **CASE WHEN ADDITIONAL EVIDENCE CAN BE CONSIDERED BY AA OR GSTAT:** The appellant shall not be allowed to produce before Appellate Authority (**AA**) or Appellate Tribunal (**GSTAT**) 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 Appellate Authority except in the following circumstances, namely:—
 - 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 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 adjudicating authority or Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

- **REASON TO BE RECORDED BEFORE ADMISSION OF ADDITIONAL EVIDANCE:** No evidence shall be admitted under sub-rule (1) unless the AA or the GSTAT records in writing the reasons for its admission.

- **HEARING TO ADJUDICATING AUTHORITY:** 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/any witness in rebuttal of evidence produced by the appellant under sub-rule (1).

- **POWER TO DIRECT PRODUCTION OF DOCUMENT/WITNESS:** 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.

WHERE IS GST TRIBUNAL (GSTAT) ??



MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 13th March, 2019

S.O. 1359(E).—In exercise of the powers conferred by the section 109 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendation of the Council, hereby notifies the creation of the National Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi, with effect from the date of publication of this notification in the Gazette of India (Extraordinary).

[No. 1/2019, [F. No. A.50050/99/2018-Ad.1C(CESTAT)]

RITVIK PANDEY, Jt. Secy.

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 21st August, 2019

S.O. 3009(E).—In exercise of the powers conferred by the sub section 6 of section 109 of the Central Goods and Services Tax Act, 2017, the Central Government, on the recommendation of the Goods and Services Tax Council, hereby notifies the creation of the **State Benches of the Goods and Services Tax Appellate Tribunal (GSTAT)** as per the details contained in the table 1 below and **Area Benches** as per the details contained in table 2 below, with effect from the date of publication of this notification in the Gazette of India (Extraordinary):—

Table-1

| S. No. | Name of State/Union Territory | Location: |
|--------|-------------------------------|--------------------|
| 1. | Andhra Pradesh | Vijayawada |
| 2. | Bihar | Patna |
| 3. | Chhattisgarh | Raipur |
| 4. | Delhi | New Delhi |
| 5. | Goa | Panaji |
| 6. | Gujarat | Ahmedabad |
| 7. | Haryana | Hisar |
| 8. | Himachal Pradesh | Shimla |
| 9. | Jharkhand | Ranchi |
| 10. | Karnataka | Bengaluru |
| 11. | Kerala | Thiruvananthapuram |
| 12. | Maharashtra | Mumbai |
| 13. | Odisha | Cuttack |

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THE GAZETTE OF INDIA : EXTRAORDINARY

[PART II—SEC. 3(ii)]

Table 2

| S. No. | Name of State | Location: |
|--------|----------------|--|
| 1. | Andhra Pradesh | One Area Bench each at Vishakhapatnam and Tirupati |
| 2. | Gujarat | One Area Bench each at Surat and Rajkot |
| 3. | Maharashtra | One Area Bench each at Pune and Nagpur |
| 4. | West Bengal | Two Area Benches at Kolkata |

[F. No. A.50050/150/2018-Ad.1C(CESTAT)]

RITVIK PANDEY, Jt. Secy.

REASON FOR DELAY IN FORMATION OF GST TRIBUNAL

- Formation of GST Appellate Tribunal was delayed in view of the order by **Madras High Court in case of Revenue Bar Assn. v. Union of India** [W.P.Nos.21147, 21148 and 14919 of 2018 dated 20th Sep 2019]. Relevant para of said judgment is reproduced below:

*“105. The principle which emerges is that while deciding issues as to whether the decision making process by the adjudicating authority or the appellate authority was **just, fair and reasonable** and to decide issues regarding interpretation of notifications and sections under the CGST Act a **properly trained judicially mind is necessary** which the experts will not have. The number of expert members therefore cannot exceed the number of judicial members on the bench.”*

*(ii) **Section 109(3) and 109(9) of the CGST Act, 2017, which prescribes that the tribunal shall consist of one Judicial Member, one Technical Member (Centre) and one Technical Member (State), is struck down.**”*



NOTIFICATION FOR FORMATION OF STATE BENCH Dt – 14.09.2023

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 14th September, 2023

S.O. 4073(E).—In exercise of the powers conferred by the sub-section 4 of section 109 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and in supersession of the Ministry of Finance, Department of Revenue's notification number S.O.3009(E), dated the 21st August, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 21st August, 2019 and the notification number S.O.4332(E) dated the 29th November, 2019, published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 02nd December, 2019, the Central Government, on the recommendation of the Goods and Services Tax Council, hereby constitutes the number of State Benches of the Goods and Services Tax Appellate Tribunal as specified in column (3) of the table below, with respect to the State specified in the corresponding entry in column (2) of the said table, at the location specified in corresponding entry in column (4) thereof, with effect from the date of publication of this notification in the Gazette of India (Extraordinary), namely:—

TABLE

| S.No. | State Name | No. of Benches | Location |
|-------|--|----------------|--|
| (1) | (2) | (3) | (4) |
| 1 | Andhra Pradesh | 1 | Vishakhapatnam and Vijayawada |
| 2 | Bihar | 1 | Patna |
| 3 | Chhattisgarh | 1 | Raipur and Bilaspur |
| 4 | Delhi | 1 | Delhi |
| 5 | Gujarat | 2 | Ahmedabad, Surat and Rajkot |
| 6 | Dadra and Nagar Haveli and Daman and Diu | | |
| 7 | Haryana | 1 | Gurugram and Hissar |
| 8 | Himachal Pradesh | 1 | Shimla |
| 9 | Jammu and Kashmir | 1 | Jammu and Srinagar |
| 10 | Ladakh | | |
| 11 | Jharkhand | 1 | Ranchi |
| 12 | Karnataka | 2 | Bengaluru |
| 13 | Kerala | 1 | Ernakulum and Trivandrum |
| 14 | Lakshadweep | | |
| 15 | Madhya Pradesh | 1 | Bhopal |
| 16 | Goa | 3 | Mumbai, Pune, Thane, Nagpur, Aurangabad and Panaji |
| 17 | Maharashtra | | |

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 29th December, 2023

S.O. 1(E).—In exercise of the powers conferred by the sub-section 3 of section 109 of the Central Goods and Services Tax Act, 2017 (12 of 2017) and in supersession of the Ministry of Finance, Department of Revenue's notification number S.O.1359(E), published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated the 13th March, 2019, except as respect things done or omitted to be done before such supersession, the **Central Government**, on the recommendation of the Goods and Services Tax Council, **hereby constitutes the Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) at New Delhi**, with effect from the date of publication of this notification in the official Gazette.

[F. No. A-50050/99/2018-Ad.1CCESTAT(Pt.)]

BALASUBRAMANIAN KRISHNAMURTHY, Jt. Secy.

gular Snip

Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023

MINISTRY OF FINANCE

(Department of Revenue)

NOTIFICATION

New Delhi, the 25th October, 2023

G.S.R.793(E).— In exercise of the powers conferred by section 110 read with section 164 of the Central Goods And Services Tax Act, 2017 (12 of 2017) and in supersession of the Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2019 except as respects things done or omitted to be done before such supersession, the Central Government, on the recommendations of the Council, hereby makes the following rules, namely:-

CHAPTER I PRELIMINARY

- 1. Short title, commencement and application.**— (1) These rules may be called the Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023.
- (2) They shall come into force on the date of their publication in the Official Gazette.
- (3) These rules shall apply to the President, Judicial Member, Technical Member (Centre) and Technical Member (State) of the Principal Bench and State Bench of Goods and Services Tax Appellate Tribunal.

‘Expect GST Appellate Tribunals by around July or August’

February 03, 2024 08:11 pm | Updated 08:11 pm IST - NEW DELHI



VIKAS DHOOT

The much-awaited Goods and Services Tax (GST) Appellate Tribunals, intended to resolve taxpayer disputes under the six-and-a-half years old indirect tax regime, may begin operations around July or August, Revenue Secretary Sanjay Malhotra told *The Hindu* in an interview on Saturday.

सतपुड़ा की पहली मंजिल पर बैठेगी बैंच भोपाल में जीएसटी अपीलेट ट्रिब्यूनल जुलाई तक

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भोपाल. व्यापारियों की जीएसटी से जुड़े मामलों की सुनवाई के लिए जीएसटी अपीलेट ट्रिब्यूनल (जीएसटीएटी) भोपाल में जुलाई तक शुरू हो जाएगा। सब कुछ ठीक रहा तो ट्रिब्यूनल की बैंच सतपुड़ा भवन के प्रथम तल पर बैठेगी। न्यायिक सदस्य एवं डिपार्टमेंटल सदस्य की नियुक्ति की प्रक्रिया भी शुरू हो गई। जीएसटी परिषद की 49वीं बैठक में मंत्रियों के समूह ने देश की सभी राज्यों की राजधानी में ट्रिब्यूनल स्थापित करने को कहा था। इसके बाद भोपाल में जीएसटीएटी स्थापित करने की कवायद शुरू की गई।

यह होगा फायदा

जीएसटी अपीलीय न्यायाधिकरण की स्थापना से व्यापारियों को उच्च न्यायालयों में रिट क्षेत्राधिकार का सहारा लेने की जरूरत नहीं पड़ेगी। सीए नवनीत गर्ग बताते हैं कि कमिश्नर अपील के आदेश से असंतुष्ट टैक्सपेयर्स जीएसटीएटी में अपील दायर कर सकते हैं।

सरकार की ओर से सतपुड़ा में चिह्नित जगह पसंद हमें पसंद आई है। रिपोर्ट बनाकर दिल्ली भेजी जाएगी। उसके बाद जगह फाइनल होगी।

राकेश गोयल, प्रधान आयुक्त, भोपाल जोन, सेंट्रल जीएसटी

भारत सरकार / Government of India
वित्त मंत्रालय / Ministry of Finance
राजस्व विभाग / Department of Revenue



Applications are invited for posts of **Judicial Members (63 posts)** and **Technical Members (Centre) (32 posts)** and **Technical Members (State) (1 post)** in the Principal Bench and 31 State Benches of Goods and Services Appellate Tribunal

(1) Eligibility:

- **Judicial Members:** Judges of High Court, District and Additional District Judges and Advocates with specified years of experience
- **Technical Member (Centre):** Serving or retired officers with at least 25 years of experience in Group A in Indian Revenue Service (Customs & Indirect Tax) or All India Services with at least 3 years of experience in indirect taxes or finance and tax in Central Government.
- **Technical Member (State):** Serving or retired officers of All India Services or specified Officers of State Government with atleast 25 years of experience in Group A or equivalent with at least 3 years of experience in indirect taxes or finance and tax in State Government.

(2) Minimum age to apply is 50 years (as on last date of application).

(3) Pay is ₹ 225,000 (fixed) per month. All other allowances and other terms and conditions of service (DA, Medical etc.) shall be the same as applicable to Central Government officers carrying the same pay (presently an officer at Pay Level 17).

(4) Further details regarding eligibility and other terms and conditions are available on the website of Department of Revenue: <https://www.dor.gov.in/gstat-recruitment> or scan the QR code given in this advertisement.

5) Application may be submitted online in the link provided in the above website. The same can be submitted from **19.02.2024**. The application, complete in all respects along with relevant attachments, may be submitted **before 5:00 PM on 31.03.2024**.



LEGAL WAYS OF LITIGATION

MANAGEMENT

INHERENT EXPECTATIONS OF APPLICATION OF MIND FROM ADJUDICATING AUTHORITY DURING ADJUDICATION PROCEEDING:

- **HON'BLE HC OF BOMBAY - SHEETAL DILIP JAIN VS THE STATE OF MAHARASHTRA & ORS [WRIT PETITION (L) NO.17591 OF 2022]**
 - ✓ Only 7 days were given to reply to SCN and on 8th Day order was passed by authority.
 - ✓ Observation by Hon'ble HC –
 - We are constrained to note that **such orders without application of mind** are being passed contrary to the basic provisions of the Act and the Rules framed thereunder.
 - **These acts/omissions of Respondents' officers is adding to the already overburdened dockets of the Court.**
 - **Valuable judicial time is wasted** because such unacceptable orders are being passed by Respondents' officers.
 - **The officers do not seem to understand or appreciate the hardship** that is caused to the general public.

INHERENT EXPECTATIONS OF APPLICATION OF MIND FROM ADJUDICATING AUTHORITY DURING ADJUDICATION PROCEEDING:

▪ HON'BLE HC OF BOMBAY - SHEETAL DILIP JAIN VS THE STATE OF MAHARASHTRA & ORS [WRIT PETITION (L) NO.17591 OF 2022]

- ✓ Only 7 days were given to reply to SCN and on 8th Day order was passed by authority.
- ✓ Observation by Hon'ble HC –
 - In this case, in our view, it will only be fit and proper that Respondents are saddled with costs. **Respondents shall pay a sum of Rs.10,000/- as donation to PM Cares Fund** and this amount shall be paid within two weeks from the date this order is uploaded
 - A copy of this order shall be forwarded to the CBIC and to the Chief Commissioner of State Tax, Maharashtra, so that they could **at least hold some kind of training and/or orientation session/course, etc. to apprise and educate its officers on the prevailing law and rules framed thereunder and also explain to them what 'principles of natural justice' mean.**

RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD – SEC 161

▪ PROVISION RELATING TO RECTIFICATION OF ERROR IN NOTICE/ORDER:

- ✓ Any authority, who has passed or issued any decision or order or notice or certificate or any other document, **may rectify any error**
- ✓ which is APPARENT ON THE FACE OF RECORD in such decision or order or notice or certificate or any other document,
- ✓ either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person
- ✓ within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.
- ✓ Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD – SEC 161

- **PROVISION RELATING TO RECTIFICATION OF ERROR IN NOTICE/ORDER:**
- ✓ Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:
- ✓ Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

- Rule 142(7) of CGST Rules 2017 –
Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC-08**

RECTIFICATION OF ERRORS APP/

[FORM GST DRC - 08

[See rule 142(7)]

Reference No.:

Date:

Summary of Rectification /Withdrawal Order

| | |
|---|------------------|
| 1. Particulars of order: | |
| (a) Financial year, if applicable | |
| (b) Tax period, if any | From --- To ---- |
| (c) Section under which order is passed | |
| (d) Original order no. | |
| (e) Original order date | |
| (f) Rectification order no. | |
| (g) Rectification order date | |
| (h) ARN, if applied for rectification | |
| (i) Date of ARN | |

2. Your application for rectification of the order referred to above has been examined
3. It has come to my notice that the above said order requires rectification (Reason for rectification as per attached annexure)
4. The order referred to above (issued under section 129) requires to be withdrawn
5. Description of goods / services (if applicable) :

| Sr. No. | HSN code | Description |
|---------|----------|-------------|
| | | |
| | | |

6. Section of the Act under which demand is created:

7. Details of demand, if any, after rectification :

(Amount in Rs.)

| Sr. No. | Tax Rate | Turnover | Tax Period | | Act | POS (Place of Supply) | Tax | Interest | Penalty | Others | Total |
|--------------|----------|----------|------------|----|-----|-----------------------|-----|----------|---------|--------|-------|
| | | | From | To | | | | | | | |
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 |
| | | | | | | | | | | | |
| Total | | | | | | | | | | | |

You are hereby directed to make the payment by <Date> failing which proceedings shall be initiated against you to recover the outstanding dues.



RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD – SEC 161

▪ JUDICIAL PRONOUNCEMENT OF RECTIFICATION:

- ✓ Supreme Court in case of **M/S. DEVA METAL POWDERS (P) LTD. V/S. COMMISSIONER, TRADE TAX, UTTAR PRADESH** [reported in (2008) 2 Supreme Court Cases 439] wherein Hon'ble Supreme Court has considered the nature and scope of the Rectification under Section 22 of the U.P. Trade Tax Act, 1948 and held that

“the word “mistake” must be “apparent error” means mistakes should be of such nature which can be rectified which is apparent from record. A decision on a debatable point of law or a disputed question of fact is not a mistake apparent from the record”. The plain meaning of the word “apparent” is that it must be something which appears to be so ex-facie and it is incapable of argument or debate.

13.....Where an error is far from self-evident, it ceases to be an apparent error. It is, no doubt, true that a mistake capable of being rectified under section 22 is not confined to clerical or arithmetical mistake. On the other hand, it does not cover any mistake which may be discovered by a complicated process of investigation, argument or proof”

RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD – SEC 161

▪ JUDICIAL PRONOUNCEMENT OF RECTIFICATION:

- ✓ HON'BLE SUPREME COURT IN CASE OF 'ASSISTANT COMMERCIAL TAXES V/S. M/S. MAKKAD PLASTIC AGENCIES DATED 29TH MARCH 2011 (CIVIL APPEAL NO. 2692 OF 2011)', has observed as follows:-

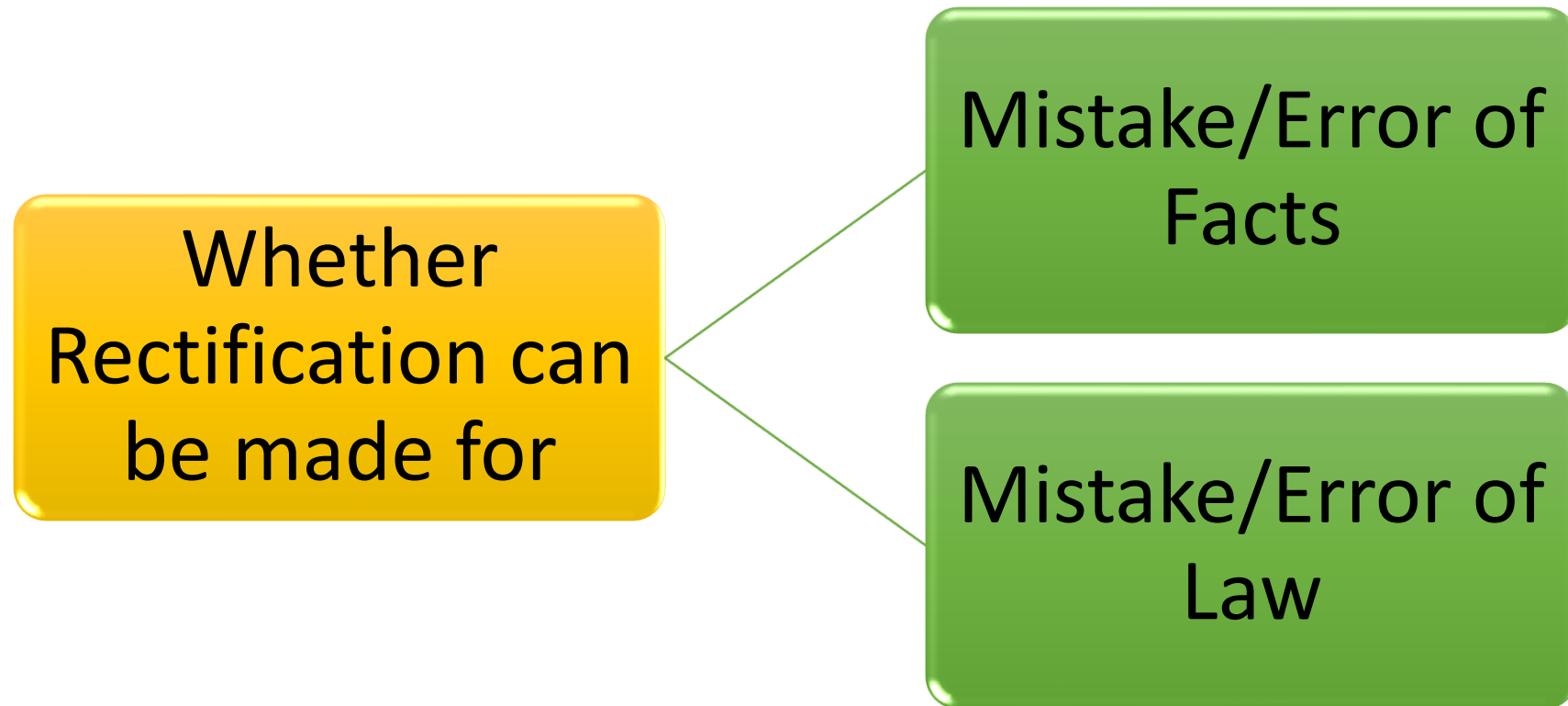
“The scope and ambit of the power which could be exercised under section 37 of the Act of 1994 is circumscribed and restricted within the ambit of the power vested by the said section. Such a power is neither a power of review nor is akin to the power of revision but is only a power to rectify a mistake apparent on the fact of the record. Rectification implies the correction of an error or a removal of defects of imperfections. It implies an error, mistake of defect which after rectification is made right.”



RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD – SEC 161

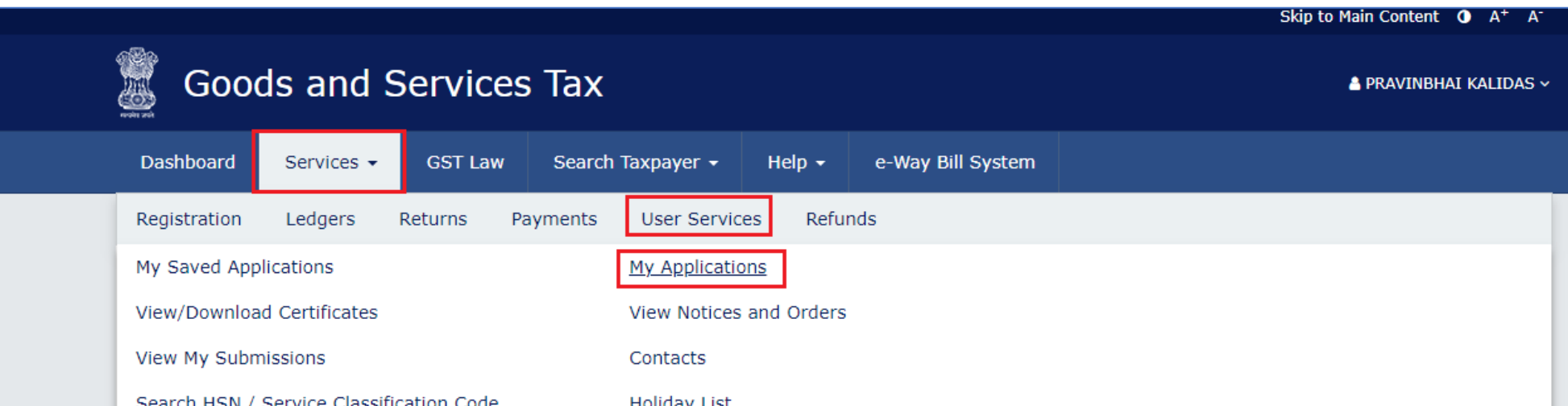
▪ JUDICIAL PRONOUNCEMENT OF RECTIFICATION:

- ✓ BOMBAY HIGH COURT IN THEIR JUDGMENT DATED 3/12/1977 IN CASE OF 'COMMISSIONER OF SALES TAX V/S. DHARAMPUR LEATHER CLOTH PVT. LTD. (41 STC 274)' cleared that the mistake apparent from record that can be rectified are both mistake of law and fact.

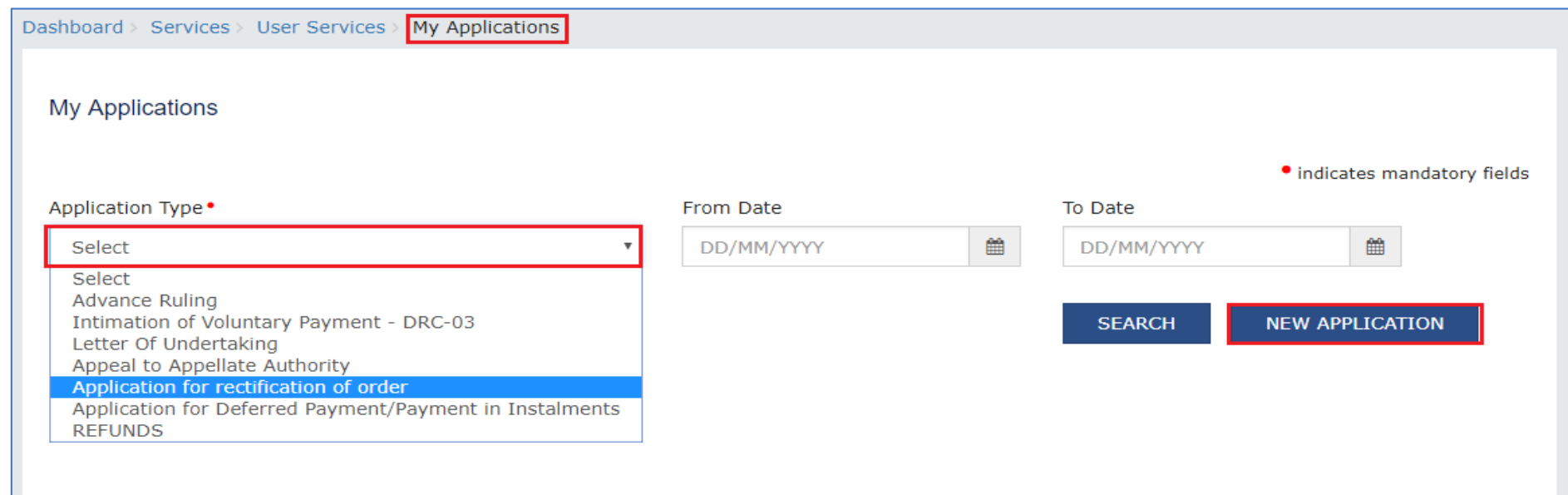


RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD – SEC 161

PROCEDURE OF RECTIFICATION APPLICATION:



The screenshot shows the top navigation bar of the Goods and Services Tax portal. The user is logged in as PRAVINBHAI KALIDAS. The main menu includes Dashboard, Services, GST Law, Search Taxpayer, Help, and e-Way Bill System. The Services dropdown menu is open, showing options like Registration, Ledgers, Returns, Payments, User Services, and Refunds. The 'User Services' and 'My Applications' options are highlighted with red boxes.



The screenshot shows the 'My Applications' form. The breadcrumb trail is Dashboard > Services > User Services > My Applications. The form includes a dropdown for 'Application Type' with a red box around it, showing options like 'Application for rectification of order'. There are also 'From Date' and 'To Date' fields with calendar icons. A 'SEARCH' button and a 'NEW APPLICATION' button (highlighted with a red box) are visible. A legend indicates that a red dot next to a field name indicates mandatory fields.

RECTIFICATION OF ERRORS APPARENT ON THE FACE OF RECORD – SEC 161

PROCEDURE OF RECTIFICATION APPLICATION:

Dashboard Services GST Law Search Taxpayer Help e-Way Bill System

Dashboard > Services > User Services > My Applications > Rectification of Order

GSTIN/UIN/Temp Id - 18AJIPA1572EAZB Legal Name - ANGAD JASBIRSINGH ARORA Trade Name - Angad Provision Status - DRAFT

• Indicates Mandatory Fields

Original Order Number • **Original Order Issue Date** •

| Tax Period | | | |
|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| From | | To | |
| <input type="text" value="Select"/> | <input type="text" value="Select"/> | <input type="text" value="Select"/> | <input type="text" value="Select"/> |

Grounds for rectification •

1000 characters remaining

Attachments

No file chosen

- File with PDF or JPEG format is only allowed
- Maximum 4 files and 5 MB for each file allowed

UNSIGNED NOTICE - NOT VALID

- **GST ACT REQUIRE NOTICES/ORDER TO BE SIGNED:**

As per **Rule 26(3) of CGST/SGST Rule 2017**, “All notices, certificates and orders under the provisions of this Chapter shall be issued electronically by the proper officer or any other officer authorised to issue such notices or certificates or orders, through digital signature certificate or through E-signature as specified under the provisions of the Information Technology Act, 2000 (21 of 2000) or verified by any other mode of signature or verification as notified by the Board in this behalf.”

- In landmark case, **NAZIR AHMAD VS KING EMPEROR [AIR 1936 PC 253]** it was categorically held that “where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all”.

- The Hon’ble Delhi High Court in the case of **MARG ERP LTD V. COMMISSIONER OF DELHI GOODS AND SERVICE TAX & ANR.** [(2023) 7 Centax 174 (Del.)] regarding an unsigned order passed by the Revenue Department, has held that - *an unsigned notice or order cannot be considered as an order, and hence cannot be sustained.*

NON SPEAKING ORDER

- Hon'ble Bombay High court in case of **ARCHANA TEXTILE CORPORATION VS THE STATE OF MAHARASHTRA AND ORS** [WRIT PETITION NO. 11022 OF 2022] has set side the Show Cause Notice and Assessment Order for lapse of not providing all the details along with the Show Cause Notice. The Hon'ble Court held that –

“such procedure adopted is totally incorrect. In the instant case, A Show Cause Notice was issued to the Petitioner without any allegation or details of any sale or claim of deduction which the Petitioner had claimed or recorded in an incorrect manner.

Hon'ble court made remark that “we fail to understand why Respondent No.3 could not have provided all the details alongwith the show cause notice. This is a serious lapse and we find in many matters the concerned officers do not provide all the details. Perhaps, they do not have proper training on adjudication matters or they are not even aware about the legal provisions or need to follow principles of natural justice”

Hon'ble court also warned the respondent officer that this court will not be so generous in future and may even consider directing the observations made to be specified in the career record of the concerned officer. We also hope that the Board & the Principal Commissioner will take these matters seriously and give proper training to its officers.”

NON SPEAKING ORDER

- Supreme Court of India in the case of **SHRI SWAMIJI OF SHRI ADMAR MUTT AND OTHERS V. THE COMMISSIONER, HINDU RELIGIOUS AND CHARITABLE ENDOWMENTS DEPT. AND ORS.**, [REPORTED IN (1979) 4 SCC 642] that

“Reason is the soul of the Law, and when the reason of any particular law ceases, so does the Law itself”

- **Section 75(6):** Speaking Order – *The proper officer, in his order, shall set out the relevant “facts” and the “basis of his decision”.*
- **MITTAL AGRO PVT. LTD. Versus COMMISSIONER OF COMMERCIAL TAX [(2023) 12 Centax 46 (All.) [17-10-2023]]** - *“It is settled that a non speaking order is violative of Article 14 of the Constitution of India, thus, on the limited ground of not considering any material whatsoever and the order being a non-speaking order, the order dated 4-7- 2023 is quashed. The matter is remanded back to the appellate authority to pass an order on the appeal of the petitioner after giving opportunity of hearing and considering the material on record, in accordance with law.”*

NON SPEAKING ORDER

- Hon'ble High Court of Madras in case of - **TVL. RAJENDRA STEEL INDUSTRIES Versus STATE TAX OFFICER (ST)** [(2023) 10 Centax 132 (Mad.)] held that - “Since order determining dues which were liable to be paid by assessee was a non-speaking order, same was to be set aside”
- THE HIGH COURT OF MADRAS in case of **C.SIVA ANAND Versus SUPERINTENDENT OF GST AND CENTRAL EXCISE** [(2023) 11 Centax 250 (Mad.)], the assessment **order issued to petitioner was one-line order** and did not address any grounds. Said assessment order was illegal, arbitrary and violated principles of natural justice and Hon'ble has observed that Impugned order was a non-speaking order, meaning that it lacked adequate reasoning and explanation therefore said order was to be quashed and remitted back to revenue.

NON SPEAKING ORDER

- In case of **DEE CUBES DIAMONDS PVT. LTD. Versus STATE OF GUJARAT**, [(2023) 4 Centax 385 (Guj.)], Hon'ble High Court of Gujarat observed that - reasons are heart and soul of the order and non-communication of the same itself amounts to denial of reasonable opportunity of hearing **resulting into miscarriage of justice.** Therefore, applying the same principle, as the show cause notice dated 26-5-2022 is bereft of any reasons, the same deserves to be quashed and set aside and hereby quashed and set aside.

- Hon'ble court has also held similar in below cases:
 - P & C PROJECTS PVT. LTD. Versus ASSISTANT COMMISSIONER (ST)(FAC), CIRCLE [(2023) 4 Centax 323 (Mad.)]
 - PANKAJ BEHARI SAHA Versus STATE OF TRIPURA [(2023) 7 Centax 188 (Tripura)]

QUASI-JUDICIAL AUTHORITIES MUST RECORD REASONS WHILE PASSING ORDER



- Hon'ble Supreme Court in the case of **SIEMENS ENGINEERING & MANUFACTURING CO. OF INDIA LTD. V. UOI** (1976) 2 SCC 981 wherein the Hon'ble Apex Court has held that quasi-judicial authorities must deal with the submissions advanced by the assesses and pass elaborate order discussing the arguments of the assesses in the manner of a Court of law as only then the quasi-judicial authorities will be able to justify their existence and carry credibility with the people by inspiring confidence in the adjudicatory process. The rule requiring reasons to be given in support of an order is like the principle of audi alteram partem, a basic principle of natural justice which must inform every quasi-judicial process and this rule must be observed in its proper spirit.

In this case, Respondent however passed the impugned order merely reiterating the allegations of the show-cause notice and completely ignoring the submissions available on record.



PRINCIPAL OF RES JUDICATA

- Double adjudication of same matter for same year is against settled principal of “**Res Judicata**” which means a thing or matter that has been finally decided and cannot be litigated again between the same parties.
- Hon’ble High Court Of Jharkhand, In case of AMBEY MINING PVT. LTD. Versus COMMISSIONER OF STATE TAX, DHURWA [W.P. (T) No. 361 of 2023, decided on 17-7-2023. (2023) 8 Centax 213 (Jhar.)] has held that -

“Revenue could not re-agitate and issue fresh show cause notice again for same cause of action covering same period which had already been adjudicated and appellate order passed by first Appellate Authority had been accepted by department and same had attained finality”

REQUIREMENT OF DIN

- Keeping government objective of **accountability and transparency** , Document Identification Number – DIN system was introduced on all communication / notices from GST Department from 23rd Dec 2019 . It would also provide the taxpayer a digital facility to verify any communications and its genuiness.
- **Any communication** from GST or Custom or Central Excise department **without a computer generated DIN, would be treated as invalid and shall be deemed to be as if it has never been issued.**
- In exceptional circumstances, notice can be issued without DIN, on satisfaction of below condition:
 - ✓ Exceptional reason to be recorded in writing in the file. Such exceptional reason can be :
 - Technical difficulties in generating DIN or
 - When communication is to be made at short notice/urgent situation & authorised officer is outside the office.
 - ✓ Such communication/notice should expressly state that, it has been issued without a DIN.
 - ✓ Said communication is regularised within 15 working days of its issuance - (i) by post facto approval of superior officer (ii) mandatorily generating DIN after post facto approval

REQUIREMENT OF DIN

- **Circular No 122/41/2019** GST dated 5th Nov 2019 and **Circular No 128/47/2019** GST dated 23rd Dec 2019
- Format of DIN is as under:

The format of the DIN shall be **CBIC-YYYY MM ZCDR NNNNNN** where,

- (a) **YYYY** denotes the calendar year in which the DIN is generated,
- (b) **MM** denotes the calendar month in which the DIN is generated,
- (c) **ZCDR** denotes the Zone-Commissionerate-Division-Range Code of the field formation/Directorate of the authorized user generating the DIN,
- (d) **NNNNNN** denotes 6 digit alpha-numeric system generated random number.

- Importance of DIN :

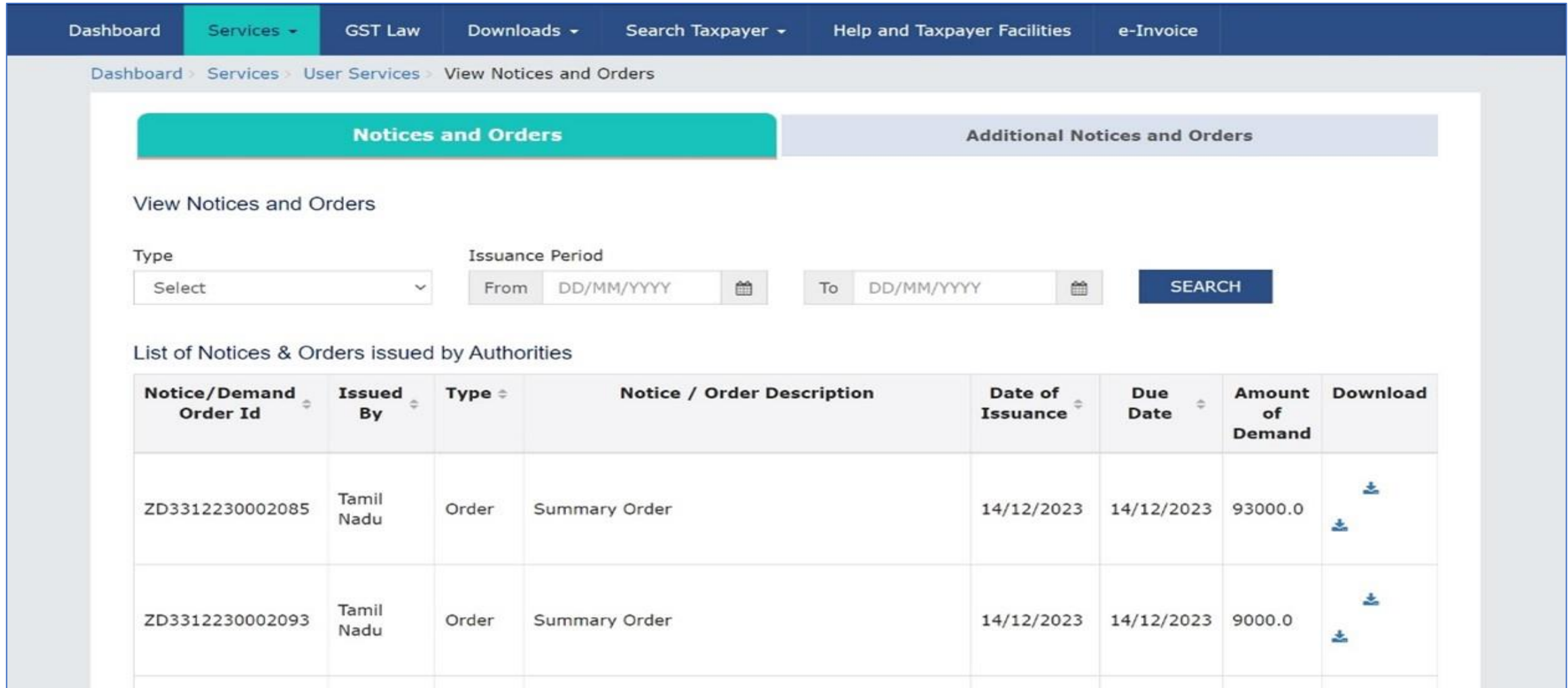
charge to ensure its successful implementation. **It is reiterated that any specified document that is issued without the electronically generated DIN shall be treated as invalid and shall be deemed to have never been issued.** Therefore, it is incumbent upon all officers concerned to strictly adhere to these instructions.

NOTICE UPLOADED IN “ADDITIONAL NOTICES AND ORDER” TAB INSTEAD OF “VIEW ORDER AND NOTICE” IN GST PORTAL

- ***Hon’ble Bombay High Court in Case of T.S. LINES INDIA PVT. LTD. Versus STATE OF MAHARASHTRA [(2024) 15 Centax 273 (Bom.)]*** held that - *“Where assessee was not aware of order issued under section 73 of CGST Act, being not available in 'View order and notice' section on portal and nor was same communicated by e-mail, instead order and notice were uploaded on 'Additional notices and order section'. also assessee was not heard and was not given any opportunity to reply to notice, impugned order was to be quashed and set aside. Matter reminded back”*
- ***Sabari Infra Pvt. Ltd. Versus Assistant Commissioner (ST)*** reported in ***(2023) 10 Centax 92 (Mad.)***, wherein notice was uploaded under the tab “Additional Notices and Orders” instead of “View Notices and Orders”. Hon’ble high court has held – *“Where complexity of architecture of web portal resulted in petitioner-assessee's failure to reply to show cause notice, matter was remitted back to respondent-department and assessment orders passed on basis of show cause notice were set aside”*

NOTICE UPLOADED IN “ADDITIONAL NOTICES AND ORDER” TAB INSTEAD OF “VIEW ORDER AND NOTICE” IN GST PORTAL

- *Court judgement lead to changes on GST Portal in Jan 2024*







Dashboard > Services > User Services > View Notices and Orders

Notices and Orders | Additional Notices and Orders

View Notices and Orders

Type: Issuance Period: From To

List of Notices & Orders issued by Authorities

| Notice/Demand Order Id | Issued By | Type | Notice / Order Description | Date of Issuance | Due Date | Amount of Demand | Download |
|------------------------|------------|-------|----------------------------|------------------|------------|------------------|--|
| ZD3312230002085 | Tamil Nadu | Order | Summary Order | 14/12/2023 | 14/12/2023 | 93000.0 |   |
| ZD3312230002093 | Tamil Nadu | Order | Summary Order | 14/12/2023 | 14/12/2023 | 9000.0 |   |

HOW TO DEAL WITH MISTAKE IN RETURN

- In case of **DEEPA TRADERS VERSUS PRINCIPAL CHIEF COMMISSIONER OF GST AND CENTRAL EXCISE, CHENNAI** reported in (2023) 5 Centax 43 (Mad.) wherein the Hon'ble High Court has held that – *“petitioners must be permitted the benefit of rectification of errors where there is no malafides attributed to the assessee. The errors committed are clearly inadvertent and the rectification would, in fact, enable proper reporting of the turnover and input tax credit to enable claims to be made in an appropriate fashion by the petitioner and connected assessee”*
- Similarly in the case of **INSTAKART SERVICES PVT. LTD. VERSUS SALES TAX OFFICER, CLASS II** reported in (2023) 7 Centax 100 (Del.) wherein the Hon'ble Delhi High Court has held that - *if there was an inadvertent or typographical error that had crept in any returns, taxpayer could not be mulcted with tax liability in excess of what was due and payable.*

PARALLEL PROCEEDINGS ON SAME SUBJECT NOT ALLOWED

- **Section 6:** Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances
 - (1) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.
 - (2) Subject to the conditions specified in the notification issued under sub-section (1),
 - (a)
 - (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.**

- Hon'ble High Court of Gauhati in case of **SUBHASH AGARWALLA VERSUS STATE OF ASSAM** [(2024) 15 Centax 482 (Gau.)] has held that –

“ Where for same period orders were issued by authorities under CGST Act and SGST Act, under section 73, for same allegation, two parallel proceedings in respect of same period not permissible as per section 6(2) of CGST/SGST Act, order passed by authority under CGST Act was to remain suspended till returnable date. ”

EXTENDED PERIOD OF LIMITATION

- As per Section 74 of CGST act 2017, Extended period of 5 year is application for determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any willful- misstatement or suppression of facts.
- Hon'ble Supreme Court in case of **PUSHPAM PHARMACEUTICALS COMPANY Versus COLLECTOR OF C. EX., BOMBAY** [1995 (78) E.L.T. 401 (S.C.)] has allowed appeal and set aside the order partly on the ground of limitation of period. Hon'ble Apex court has laid down cardinal principal in interpreting the term "Suppression of Fact". It held that –
"In taxation, Suppression of Fact can have only one meaning that the correct information was not disclosed deliberately to escape from payment of duty. Where facts are known to both the parties the omission by one to do what he might have done and not that he must have done, does not render it suppression. In the result this appeal succeeds and is allowed. The matter is remitted back to the Authority for determining the turnover of the assessee in respect of only that period which is within six months from the date of issue of show cause

EXTENDED PERIOD OF LIMITATION

- Hon'ble Supreme Court in case of **COSMIC DYE CHEMICAL Versus COLLECTOR OF CENTRAL EXCISE, BOMBAY** [1995 (75) E.L.T. 721 (S.C.)] has allowed appeal and set aside the order on the ground of limitation of period.

✓ Fact of the case is as under –

“SSI manufacturer not including value of clearances of fully exempted goods in his declaration for previous financial year due to bona fide impression gained from two High Court judgments which held that fully exempted goods were not includible in the definition of “excisable goods” as defined in clause (d) of Section 2 of Central Excises & Salt Act, 1944. Therefore, appellant says, he was under the bona fide impression that he need not mention the value of the Rapidogens manufactured by him in his declarations”

EXTENDED PERIOD OF LIMITATION

- Hon'ble Supreme Court in case of **COSMIC DYE CHEMICAL Versus COLLECTOR OF CENTRAL EXCISE, BOMBAY** [1995 (75) E.L.T. 721 (S.C.)] has allowed appeal and set aside the order on the ground of limitation of period.
- ✓ Hon'ble court held that –
“Intent to evade duty must be proved for invoking proviso to Section 11A(1) of Central Excises & Salt Act, 1944 for extended period of limitation - Intent to evade duty built into the expressions “fraud” and “collusion” but “mis-statement” and “suppression” being qualified by immediately preceding words “wilful” and “contravention of any of the provisions of this Act or rules” being qualified by the immediately following words “with intent to evade payment of duty. It is, therefore, not correct to say that there can be a suppression or mis-statement of fact, which is not willful and yet constitutes a permissible ground for the purpose of the proviso to Section 11A. Mis-statement or suppression of fact must be willful... Mis-statement or suppression of fact in the SSI declaration cannot be called wilful - Extended period of limitation not invocable”

EXTENDED PERIOD OF LIMITATION

- Hon'ble Supreme Court in case of **C.C., C.E. & S.T., BANGALORE (ADJUDICATION) Versus NORTHERN OPERATING SYSTEMS PVT. LTD** [2022 (61) G.S.T.L. 129 (S.C.)] has held that
“Assessee having bona fide belief that he is not liable to pay any Service Tax in relation to seconded employees, Revenue having discharged later two show cause notices - Extended period of limitation not invocable in absence of any “wilful suppression” of facts, or deliberate misstatement”
- In case of **HINDALCO INDUSTRIES LTD. Versus COMMISSIONER OF C. EX., ALLAHABAD** [2003 (161) E.L.T. 346 (Tri. - Del.) 13-03-2003], Hon'ble Northern Bench of New Delhi Tribunal CEGAT, has held that “ Demand raised on the basis of information appearing in balance sheet - Balance sheet of companies being a publicly available document, allegation of suppression of such information, not sustainable - Extended period not invocable - Demand barred by limitation “

EX-PARTE ORER / PERSONAL HEARING NOT GRANTED

- Section 75(4) – **An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.**
- Hon'ble Bombay High Court in case of **MAULI SAI DEVELOPERS PVT. LTD. Versus UNION OF INDIA** [(2024) 15 Centax 524 (Bom.)] has categorically underscored the imperative need for granting a personal hearing under Section 75(4) of the CGST, 2017 even if the assessee has not explicitly requested one in writing, particularly if an adverse order is contemplated. It was held by court that –

“Where order under section 73 of CGST/MGST Act passed by respondent authority without giving opportunity of hearing, as petitioner had not requested for personal hearing, impugned order passed was in violation of principles of natural justice and ex-facie contrary to provisions of section 75(4) of CGST/MGST Act, thus was to be set aside”

EX-PARTE ORER / PERSONAL HEARING NOT GRANTED

- Hon'ble Madhya Pradesh High Court in case of **PATANJALI AYURVED LTD. Versus STATE OF MADHYA PRADESH** [(2024) 15 Centax 72 (M.P.)], Petitioner-assessee challenged adjudication order in form GST DRC-07 passed by revenue by which demand for excess Input Tax Credit had been raised, along with interest and penalty, on ground that said order was passed without considering submissions of assessee and without providing a hearing to assessee .

HELD: "As per section 75(4) it is clear that "opportunity of hearing" must be granted in two situations viz (a) where a request in specific is received in writing from person chargeable; (b) where any adverse decision is contemplated against such person - Thus it was obligatory and mandatory on part of revenue to provide assessee opportunity of personal hearing - Since no opportunity of hearing was provided to assessee, decision making process adopted by revenue was vitiated and runs contrary to principles of natural justice and statutory requirements of section 75(4) - Therefore, proceedings after stage of reply of show cause notice was to be set aside - Section 73 of Central Goods and Services Tax Act, 2017/ Madhya Pradesh Goods and Services Tax Act, 2017"

EX-PARTE ORER / PERSONAL HEARING NOT GRANTED

- Hon'ble Allahabad High Court High Court in case of ***B.L. PAHARIYA MEDICAL STORE V. STATE OF U.P [Writ Tax No. 981 of 2023 dated August 22, 2023]*** has cast light on a pivotal issue in the realm of judicial proceedings - *the significance of the opportunity for a personal hearing before passing an adverse order. The Hon'ble Allahabad High Court's determination brings clarity to the expectations of the Adjudicating Authority. Hon'ble Allahabad High Court set aside the demand order passed by the Adjudicating Authority and held that, the assessee is not required to request for opportunity of personal hearing, and it remained mandatory upon Adjudicating Authority to afford such opportunity before passing an adverse order.*

ADHERENCE TO JUDICIAL DISCIPLINE

- In the case of **UNION OF INDIA AND OTHERS V. KAMLAKSHI FINANCE CORPORATION LTD.**, [1992 Supp (1) SCC 443 (Para-6)], Hon'ble Supreme Court held that,
“the High Court has rightly criticised the conduct of the Assistant Collectors and the harassment to the assessee caused by the failure of these officers to give effect to the orders of authorities higher to them in the appellate hierarchy. The order of the Appellate Collector is binding on the Assistant Collectors working within his jurisdiction and the order of the Tribunal is binding upon the Assistant Collectors and the Appellate Collectors who function under the jurisdiction of the Tribunal. The principles of judicial discipline require that the orders of the higher appellate authorities should be followed unreservedly by the subordinate authorities. The mere fact that the order of the appellate authority is not “acceptable” to the department - in itself an objectionable phrase - and is the subject matter of an appeal can furnish no ground for not following it unless its operation has been suspended by a competent Court. If this healthy rule is not followed, the result will only be undue harassment to assessees and chaos in administration of tax laws”.

ADHERANCE TO JUDICIAL DISCIPLINE

- In the case of **TRIVENI CHEMICALS LIMITED V. UNION OF INDIA & ANR**, [(2007) 2 SCC 503 (Para-9) = 2007 (207) E.L.T. 324 (S.C.) = 2007 (5) S.T.R. 177 (S.C.)], Hon'ble Supreme Court held *“it was obligatory on the part of the authorities concerned to comply with the order passed by the Collector (Appeals). The authorities were bound to do so in view of the doctrine of judicial discipline”*
- In the case of **SMT. KAUSALYA DEVI BOGRA AND OTHERS V. LAND ACQUISITION OFFICER, AURANGABAD AND ANOTHER**, [(1984) 2 SCC 324 (Para-6)], Hon'ble Supreme Court held that *“judicial discipline requires that appellate directions should be taken as binding and followed. In the hierarchical system of Courts which exist in this country, it is necessary for each lower tier, including the Courts of Appeal, to accept loyally the decisions of the higher tiers”*.

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