



**CA Karan Sheth**  
TAX KA TEACHER

# CA FINAL IDT

## Nov'24

**Questions & Answer**

**Appeals And Revision**



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## Question and Answer

Section 107: Appeals to Appellate Authority

## Question 1.

Pursuant to audit conducted by the tax authorities under section 65, a show cause notice was issued to Home Furnishers, Surat, a registered supplier, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20th August (received by Home Furnishers on 22nd August) confirming a tax demand of Rs. 50,00,000 (i.e., CGST 25,00,000 and SGST 25,00,000) and imposing a penalty of equal amount under section 122.

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

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

(MTP) & (ICAI study material - amended)

## Answer:

- (1) An appeal against a decision/order passed by any adjudicating authority under the CGST Act or SGST Act/ UTGST Act is appealable before the Appellate Authority [Section 107(1)]. Thus, Home Furnishers can file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax. Further, such appeal can be filed within 3 months from the date of communication of such decision/order [Section 107(1)]. Thus, Home Furnishers can file the appeal to Appellate Authority on or before 22nd November. Further, the Appellate Authority can also condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].
- (2) GST law makes provisions for cross empowerment between CGST and SGST/UTGST officers to ensure that a proper officer under the CGST Act is also treated as the proper officer under the SGST/UTGST Act and vice versa. Thus, a proper officer can issue orders with respect to both, the CGST as well as the SGST/UTGST laws. GST law also provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/ revision/rectification against the said order will lie only with the proper officers of that Act (CGST Act). Accordingly, if any order is passed by the proper officer under a SGST Act, any appeal/ review/ revision/ rectification against the said order will lie only with the proper officer under that SGST Act. Thus, Home Furnishers is required to file an appeal only with the Central Tax Appellate Authority [Section 6 of CGST Act].
- (3) Home Furnishers' view is not correct in law. Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—

- (a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- (b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order subject to a maximum of Rs. 25 crores\*.

\*Equivalent amount is required to be deposited with respect to SGST liability.

Since in the given case, Home Furnishers disagrees with the entire tax demanded, it has to make a pre-deposit of 10% of the amount of tax in dispute arising from the impugned order, i.e., 10% of Rs. 50,00,000 which is Rs. 5,00,000 (i.e., Rs. CGST 2,50,000 and SGST Rs. 2,50,000).

### Question 2.

In an order dated 20.08.20XX issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed a CGST demand of Rs 280 crore. The company is disputing the entire demand of CGST and wants to know how much pre-deposit it has to make under the CGST Act, 2017 for filing an appeal before the Appellate Authority against the order of the Joint Commissioner. Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the Appellate Authority, how much pre-deposit it has to make under the CGST Act, 2017 for filing the said appeal?

(RTP Nov 19) (ICAI study material)

### Answer:

Section 107(6) of the CGST Act, 2017 provides that no appeal shall be filed with the Appellate Authority unless the applicant has paid 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 a sum equal to 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of Rs 25 crore. Thus, the amount of pre-deposit for filing an appeal with Appellate Authority cannot exceed Rs 25 crore.

Thus, in the given case, the amount of pre-deposit for filing an appeal with the Appellate Authority against the order of Joint Commissioner, where entire amount of tax is in dispute, is:

- (i) Rs 28 crore [10% of the amount of tax in dispute, viz. Rs 280 crore] or
  - (ii) Rs 25 crore,
- whichever is less = Rs 25 crore.

Further, section 112(8) of the CGST Act, 2017 provides that no appeal shall be filed with the Appellate Tribunal unless the applicant has paid 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 a sum equal to 20% of the remaining amount of tax in dispute, in addition to the amount paid as pre-deposit while filing appeal to the Appellate Authority, arising from the said order subject to a maximum of Rs 50 crores.

Thus, in the given case, the amount of pre-deposit for filing an appeal with the Appellate Tribunal against the order of the Appellate Authority, where entire amount of tax is in dispute, is

- (i) 56 crores [20% of the amount of tax in dispute, viz. Rs 280 crores] or
  - (ii) 50 crores,
- whichever is less = Rs 50 crores.



### Question 3.

XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 1st November under section 73 wherein it was decided as follows:

CGST+SGST due	Rs. 6,00,000
Interest	@ 18% p.a. for number of delayed days
Penalty	Rs. 60,000

The taxpayer filed an appeal before the Appellate Authority on 26th November. Determine the amount of pre-deposit to be made by the company for filing the appeal.

Whether your answer would be different if the taxpayer appeals only against part of the demanded amount say Rs. 4,00,000 and admits the balance liability of tax amounting to Rs. 2,00,000 and proportionate penalty arising from the said order?

(ICAI study material) & CA Final RTP May 23-similar)

### Answer:

Section 107(6) provides that no appeal shall be filed before Appellate Authority, unless the appellant pays\*: -

- in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
- 10% of remaining tax in dispute arising from the impugned order subject to a maximum of Rs. 25 crores, in relation to which the appeal has been filed.

**\*Equivalent amount is required to be deposited with respect to SGST liability.**

Thus, in the given case, XY Company has to make a pre-deposit of 10% of Rs. 6,00,000, which is Rs. 60,000 (i.e., CGST Rs. 30,000 and SGST Rs. 30,000) assuming that XY Company disagrees with the entire tax demanded.

However, when XY Company admits the liability of only Rs. 2,00,000 (CGST + SGST) and disputes the balance tax demanded of Rs. 4,00,000, it has to make a pre-deposit of:

- Rs. 2,00,000 + Rs. 20,000 [proportionate penalty on tax admitted] + interest @ 18% p.a. payable on the tax admitted for the period of delay, and
- 10% of Rs. 4,00,000 which is Rs. 40,000. (CGST Rs. 20,000 & SGST Rs. 20,000)

### Question 4.

Anirudh Ltd. is registered in Telangana and paid IGST on a transaction considering the same to be inter-State supply on the basis that the customer is situated in Delhi. However, GST authorities have raised a dispute and have issued a show cause notice that since the services are rendered within Telangana, it is an intra-State supply leviable to CGST and SGST.

Anirudh Ltd. has lost the case before the proper officer and also in first appeal before the Departmental Appellate Authority.

Advise Anirudh Ltd. regarding the following:

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

(CA Final Jan 21)

**Answer:**

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

**Question 5.**

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

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

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

Provide your legal and reasoned advice to Chandan & Co.

(CA Final May 22)

**Answer:**

- (i) An appeal against the order passed by Joint Commissioner lies before the Appellate Authority - Commissioner (Appeals).  
Chandan & Co. cannot directly approach the High Court. It needs to first file an appeal to Appellate Authority and then to Appellate Tribunal. However, a writ petition can be filed directly before the High Court for relief.
- (ii) The time-limit for filing an appeal in the given case is 3 months from the date of communication of the order appealed against, i.e., 3 months from 1st May. Hence, the appeal must be filed on or before 1st August.
- (iii) No appeal can be filed before the Appellate Authority unless appellant - Chandan & Co. has paid pre-deposit of Rs. 3,00,000, computed as sum of the following:
  - (a) Full amount of tax, interest and penalty arising from the order as admitted by him, viz. nil, and
  - (b) 10% of the remaining tax in dispute (Rs. 30,00,000) arising from the order, viz. Rs. 3,00,000.

### Section 108: Powers of Revisional Authority

#### Question 6.

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

- (i) The adjudicating authority issued the adjudication order on 23rd April and the same is communicated to the taxpayer - Mr. X - on 28th April. Mr. X, aggrieved by the order of the adjudicating authority filed an appeal to the Appellate Authority on 26th July.
- (ii) The adjudicating authority passed the order on 3rd March (communicated same day to the Commissioner). The Commissioner directs his subordinate officer to file a review application with the Appellate Authority. The subordinate officer filed the review application on 23rd September. (CA Final MTP May 21)

#### Answer:

- (i) A person aggrieved by any decision/order of an adjudicating authority can file an appeal to the Appellate Authority within 3 months from the date of communication of such decision/order. The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was a sufficient cause for such delay [Section 107 of the CGST Act, 2017].

**In view of the aforesaid provisions,** in the given case, the relevant date for computing the period of 3 months (for filing the appeal to Appellate Authority) is 28th April (date of communication of order) and not 23rd April. Accordingly, an appeal can be filed by Mr. X to Appellate Authority within 3 months from the date of communication of order (28th April), i.e., 28th July.

Thus, Mr. X has filed the appeal within the time limit prescribed under the GST law.

- (ii) The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the decision/order for the determination of such points arising out of the said decision/ order as may be specified by him.

The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107 of the CGST Act, 2017],

**In the present case,** the Commissioner directs his subordinate officer to file a review application with the Appellate Authority. The subordinate officer should have filed the said application till 3rd September (i.e., within 6 months from the date of communication of order). However, the subordinate officer filed the application on 23rd September, i.e., after the expiry of period of 6 months from the date of communication of order. Thus, in the given case, appeal has not been filed within the time limit prescribed under the GST law.

**However,** Appellate Authority can condone delay in filing of appeal upto 3rd October (up to 1 month) if it is satisfied that there was sufficient cause for such delay.

### Question 7.

Following are the details for Mr. Ravi

	Service A	Service B
assessee	Exemption claimed	Paying IGST @ 12%
Department Adjudication order on 31.12.18	Exemption not allowed	Classified in IGST @18% and demand of Rs 30 lac
Assessee (Ravi) filed appeal on 31.01.19	-	Against demand of Rs 30 lac
Appeal order passed		30.6.19

Upto which date Revisionary order can be passed.

### Answer:

Revisional authority may pass an order on any point which has not been raised and decided in an appeal before the expiry on 1 year from the date of appeal order or before expiry of 3 years from date of order sought to be revised whichever is later.

Later of two:

(i)	1 year from appeal order i.e from 30.06.19	30.06.20
(ii)	3 years from Adjudication order i.e from 31.12.18	31.12.21

Hence Revisional order can be passed upto 31.12.21.

### Question 8.

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

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

What is the time period for the Revisional Authority to exercise the power of revision?

(CA Final Nov 20)

### Answer:

The decision of Mr. Mahendran of making an appeal to the First Appellate Authority against the order of the RA is not valid in law. Any person aggrieved by an order passed against him by RA under CGST Act may appeal to the Appellate Tribunal, the second level of appeal.

The powers of the RA to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017 are as under: -

- (i) The RA may, on his own motion, or upon information received by him or on request from the SGST/ UTGST Commissioner, call for and examine the record of any proceedings.
- (ii) On examination of the case records, if RA is of the view that the decision/order passed by any officer subordinate to him is erroneous and illegal/improper or has not taken into account material facts, he may stay the operation of such order for such period as he deems fit.
- (iii) The RA, after giving the person concerned an opportunity of being heard and after making necessary further inquiry, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said order.

The RA can revise an order after the expiry of a period of 6 months from the date of communication of the said order but not later than expiry of a period of 3 years from the passing of the said decision/order.

In case of an order subject to an appeal before Appellate Authority (AA)/Tribunal/High Court/

Supreme Court, the RA can pass an order on any point which has not been raised and decided in the appeal, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

### Question 9.

With reference to section 108 of the CGST Act, 2017, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.

(ICAI study Material) & (RTP NOV 2018)

### Answer:

**Section 2(99) of the CGST Act, 2017** defines "revisional Authority" as an authority appointed or authorised under the CGST Act for revision of decision or orders referred to in section 108 of the CGST Act, 2017.

**Section 108 of the CGST Act, 2017** authorizes such "revisional authority" to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, can revise the order after giving opportunity of being heard to the noticee. The "revisional authority" can also stay the operation of any order passed by his subordinates pending such revision.

**The "revisional authority" shall not revise any order if-**

- The order has been subject to an appeal under section 107 or u/s 112 or u/s 117 or u/s 118; or
- The period specified under section 107(2) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.
- The order has already been taken up for revision under this section at any earlier stage.
- The order is a revisional order.

### Section 109

### Question 10.

How does a decision arrive in case where there is a difference of opinion in members of State bench and Principal bench?

### Answer:

#### Majority rule in case of difference of opinion

#### State bench

If, after hearing the case, the Members of 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, –

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;

#### Principal bench

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, and such point or points shall be decided according to the majority opinion including the opinion of the Members who first heard the case.



## Section 112: Appeals to Appellate Tribunal

### Question 11.

ABC Ltd., a registered taxpayer under GST, is engaged in the supply of goods. On 15th March 2024, the Commissioner (Appeals) passed an order in favor of ABC Ltd. regarding a demand of ₹50 lakh raised by the department for non-payment of tax on certain supplies. Dissatisfied with this order, the GST department filed an appeal before the Appellate Tribunal on 10th April 2024.

Upon receiving the notice of appeal on 5th May 2024, ABC Ltd. realized that although the Commissioner's order was in their favor, there were specific points in the order they wanted to challenge, particularly regarding the calculation of input tax credit (ITC) that was denied. ABC Ltd. decides to file a **Memorandum of Cross-Objections** under Section 112(5) of the CGST Act.

- Can ABC Ltd. file a memorandum of cross-objections?
- What happens if ABC Ltd. misses the deadline, is there any extension permitted?

### Answer:

Yes, **ABC Ltd.** can file a **memorandum of cross-objections** under **Section 112(5)** of the CGST Act, 2017, even though they are not the ones who initially filed the appeal. This provision allows the respondent (ABC Ltd.) to challenge parts of the Commissioner's order despite not filing an independent appeal.

ABC Ltd. must file the memorandum of cross-objections within **45 days** from the date they received the notice of the appeal. Since they received the notice on **5th May 2024**, the last date to file the memorandum would be **19th June 2024**.

If ABC Ltd. misses the 45-day deadline, the Appellate Tribunal has the authority to **extend the deadline by an additional 45 days**, provided ABC Ltd. can show **sufficient cause** for the delay. However, if they fail to do so within this extended period, they may lose the opportunity to challenge the points in the order through cross-objections.

### Question 12.

An appeal order passed by Appellate authority for

Integrated goods and services tax (IGST)	48 Lacs
Interest	7 lacs
Penalty	48 Lacs

Whether Appellate Tribunal can admit appeal?

### Answer:

As per sec 112(2) The Appellate Tribunal may in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed Rs. 50,000/- . Since the word used is "or" between tax, penalty. Hence Tribunal may refuse to entertain the appeal, though aggregate of IGST and PENALTY is Rs 96L (R.M Brothers - Tribunal).

**Question 13.**

Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the Appellate authority (AA) or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the AA. What are the exceptional circumstances specified in the rule where the production of additional evidence will be allowed? Can AA or AT direct production of any document or examination of any witness?

(XCAI Practice paper May 20)

**Answer:**

Exceptional circumstances specified in rule 112 of the CGST Rules, 2017 where the production of additional evidence will be allowed are as follows:

- (a) where the adjudicating authority/ appellate authority (AA) has refused to admit evidence, which ought to have been admitted.
- (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority/ AA.
- (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority/ AA any evidence which is relevant to any ground of appeal; or
- (d) where adjudicating authority/ AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Yes, the AA or the Tribunal can direct the production of any document or examination of any witness to enable it to dispose of the appeal.

**Section 113: Orders of Appellate Tribunal**

**Question 14.**

Does the Tribunal have any power to amend its own order?

(CBIC FAQ)

**Answer:**

Yes. The Appellate Tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record, if such error is noticed 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 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 under this sub-section, unless the party has been given an opportunity of being heard.

### Section 115: Interest on refund of amount paid for admission of appeal

#### Question 15.

In an order passed dated 1st April, 2023 issued to Sita Ram Pvt. Ltd., the Commissioner of Central Tax, being Revisionary Authority has confirmed IGST demand of 1400 crore, penalty of ₹ 200 crore and interest of 20 crore.

Sita Ram Pvt. Ltd. admits the tax liability, penalty and interest to the extent of ₹ 200 crore, 20 crore and ₹ 10 crore respectively but wishes to litigate the balance amount of demand and thus, Sita Ram Pvt. Ltd. deposits the required amount of pre-deposit on 12th April, 2023 and files an appeal with the GSTAT.

GSTAT decides the appeal in favour of Sita Ram Pvt. Ltd, on 12th June, 2023. Sita Ram Pvt. Ltd. submits an application seeking refund of the pre-deposit along with applicable interest on 2nd July, 2023 and the department acknowledges the application on the same day. The amount of pre-deposit is refunded to Sita Ram Pvt. Ltd. on 15th October, 2023.

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

#### Answer:

The amount of pre-deposit to be made by Sita Ram Pvt. Ltd. for filing the appeal to the GSTAT is as under-

- (i) full amount of tax, interest and penalty as admitted by it, i.e. ₹ 230 (200+20+10) crores and
- (ii) 20% of the remaining tax in dispute, i.e. ₹ 240 crore (20% of ₹ 1,200 crore) subject to a maximum of ₹ 100 crores (in case of IGST).  
= ₹ 330 crores

If the pre-deposit made by the appellant before the Tribunal is required to be refunded consequent to any order of the Tribunal, interest @ 9% p.a. shall be payable from the date of payment of the amount till the date of refund of such amount.

Period of delay counted from 12th April 2023 is 186 days

Interest (rounded off)= ₹ 100 crore × 6% × 186/366 = ₹ 3,04,91,80

### Section 117: Appeal to High Court

#### Question 16.

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

You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal.

(RTP MAY 2018) & (CA Final MTP May 21)

#### Answer:

As per section 117(1) of the CGST Act, 2017, an appeal against orders passed by the State Bench or Area Benches of the Tribunal lies to the High Court if the High Court is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the National Bench or Regional Benches of the Tribunal lies to the Supreme Court and not High Court. As per section 109(5) of the Act, only the National Bench or Regional Benches of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in Mr. A's case relates to place of supply, the appeal in his case would have been decided by the National Bench or Regional Bench of the Tribunal. Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

### Section 121: Non-appealable decisions and orders

#### Question 17.

Enumerate any four orders against which appeal cannot be filed under the CGST Act 2017. (CBIC FAQ), (CA final May 19) & (ICAI study material)

#### Answer:

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

- (i) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- (ii) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (iii) an order sanctioning prosecution under CGST Act; or
- (iv) an order passed under section 80 of the CGST Act (payment of tax in instalments).

### Multiple Choice Question

#### Section 107: Appeals to Appellate Authority

1. State whether following statements are true or false:
  - (i) Any person aggrieved by any decision or order passed by an adjudicating authority under the Act, may appeal to such Appellate Authority as may be prescribed within 3 months from the date on which the said decision/order is communicated to him.
  - (ii) No appeal shall be filed to Appellate Authority unless the appellant has paid sum equal to 25% of the remaining amount of tax in dispute arising from the said order, in relation to which appeal is filed.
  - (iii) Adjournment of appeal shall not be granted more than three times to a party during hearing of the appeal.
  - (iv) The Appellate Authority shall have the power to refer back the case to adjudicating authority that passed the said decision or order.
    - (a) True, True, True, False
    - (b) False, True, True, False
    - (c) True, False, True, False
    - (d) False, False, False, True
2. The amount of pre-deposit for filing an appeal to Appellate Authority cannot exceed
  - (a) 25 crores under CGST act and 25 crores under SGST act
  - (b) Rs 50 crores under CGST act and Rs 50 crores under SGST
  - (c) Rs 100 crores under CGST act and Rs 100 crores under SGST
  - (d) No upper limit.
3. Time limit for filing an appeal to an Appellate Authority is.
  - (a) 3 months from issue of order
  - (b) 6 months from issue of order
  - (c) 3 months from communication of order
  - (d) None of the above



4. Time limit provided to the department to file an appeal to Appellate Authority is  
(a) 3 months (b) 6 months  
(c) 9 months (d) 12 months
5. In the scenario where an appeal is filed and a provisional acknowledgment is issued on 10th September, and the taxpayer submits the certified copy of the order sought to be appealed against on 15th September, What is the date of filing appeal ?  
a) 10th sept  
b) 15th sept  
c) 17th sept  
d) none of the above
6. The appeal is filed and provisional acknowledgement issued on 10th September. The taxpayer submits the certified copy of the order sought to be appealed against on 25th September.  
The date of filing appeal is?  
a) 10th sept  
b) 25th sept  
c) 17th sept  
d) 2nd oct
7. The appeal is filed & provisional acknowledgement is issued on 5th may .The order appeal against is uploaded on the common portal on 10th May.  
Date of filing of appeal?  
a) 8th may  
b) 17th may  
c) 10Th May  
d) 5th May

**Section 112: Appeals to Appellate Tribunal**

8. Time limit for filing a memorandum of cross objections before the Tribunal is  
(a) 15 days (b) 45 days  
(c) 90 days (d) 60 days
9. When can cases be heard by a bench consisting of a single member in Appellate tribunal?  
1)matters involves question of law  
2)Prior approval of President has been obtained  
3)Amount of tax or ITC or fine or penalty determined does not exceed 50lacs  
4) Amount of tax or ITC or fine or penalty determined does not exceed 5lacs  
options  
a) 1,2,3 (b) 1,2,4  
c) only 3 (d) only 2
10. The Tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record if such error is noticed in the order by its own accord, or is brought to its notice by the Commissioner or SGST/UTGST Commissioner or the other party to the appeal within a period of how many months from the date of such order?  
a) 1month  
b) 2month  
c) 6month  
d) 3month

11. Issues involved relates to the place of supply, shall be heard only by which bench of Appellate tribunal?
- National bench
  - State bench
  - Principal bench
  - Area bench

**Section 115:**

12. If the pre-deposit made by the appellant before the AA or the Tribunal is required to be refunded consequent to any order of the AA or of the Tribunal, as the case may be, interest as provided under section 56 shall be payable from
- the date of payment of the amount till the date of refund of such amount
  - from the date of the order of the AA or of the Tribunal till the date of refund of such amount

**Section 116: Appearance by authorised representative**

13. Mr. A, a sole proprietor, has to appear before the Appellate Authority. He decides to appear by an authorized representative. Which of the following persons can be appointed as 'authorized representative' of Mr. A under GST law?
- Sohan, his son, who has been dismissed from Government service lately.
  - Rohan, a Company Secretary, who has been adjudged insolvent.
  - Mukul, a practicing High Court advocate.
  - All of the above.

**Section 117: Appeal to High court**

14. An appeal to the High Court can be filed under the CGST Act in the following cases:
- By a person aggrieved against the order passed by the State bench or Area bench of the Appellate Tribunal.
  - By a person aggrieved against the order passed by the National bench or regional bench of the Appellate Tribunal.
  - For matters involving substantial questions of law.
  - All of the above.
- Choose the correct option from the following:
- |                    |                   |
|--------------------|-------------------|
| (a) (i) and (ii)   | (b) (i) and (iii) |
| (c) (ii) and (iii) | (d) (iv)          |

**Section 118: Appeal to Supreme Court**

15. Mr.Kiran had filed an appeal with Appellate authority regarding a matter concerning place of supply where the tax involved was amounting to Rs 10crores done by adjudicating authority which the Appellate tribunal decided in the favour of the Department. So Mr.Kiran decided to take it further and filed an appeal with Supreme court Determine the predeposit to have been deposited by Mr.Kiran and also what is the last date before which it can file an appeal with SC?
- 100% \*disputed tax amount,within 180days from the date of order appealed against
  - 100% \*disputed tax amount, there is no time limit to apply for appeal
  - 10% \*disputed tax amount,within 3months from the date of order appealed against
  - 15% \*disputed tax amount,within 180days from the date of order appealed against

**Section 121: Non-Appealable orders.**

16. Which of the following is a non- appealable order?
- an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
  - an order pertaining to the seizure/retention of books of account, register & other documents
  - an order sanctioning prosecution under this Act
  - All of the above.

**ANSWERS:**

Q.	Ans	Reason
1.	c	(i) <b>True</b> , 3 months is the time limit for aggrieved person to apply for appeal to Appellate Authority (AA). (ii) <b>False</b> , the pre deposit for appeals to AA is 10% of the amount of tax in dispute. (iii) <b>True</b> , maximum 3 times adjournment can be given. (iv) <b>False</b> , AA has no power to remand case back to Adjudicating authority.
2.	a	As per section 107, the amount of pre-deposit for filing an appeal to Appellate Authority cannot exceed 25 crores under CGST act and 25 crores under SGST act.
3.	c	As per section 107, Time limit provided for filing an appeal to Appellate Authority is 3 months from the date of communication of order.
4.	b	As per section 107, Time limit provided to the department to file an appeal to Appellate Authority is 6 months.
5.	a	where the decision/order appealed against is not uploaded on the common portal, the appellant shall submit a selfcertified copy of the said decision or order within a period of 7 days from the date of filing of Form GST APL-01. The final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him in this behalf in Form GST APL-02. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
6.	b	Further, 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.
7.	d	Subsequently, where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued by the Appellate Authority or an officer authorised by him. The date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
8.	b	As per section 112(5), Time limit for filing a memorandum of cross objections before the Tribunal is 45 days.
9.	a	
10.	d	
11.	c	
12.	a	

13.	c	<p>Section 116, Person not qualified as Authorised representatives include:</p> <ul style="list-style-type: none"> <li>• A person who are dismissed from government services and</li> <li>• A person who has been adjudged as an insolvent.</li> </ul> <p>Person qualified as Authorised representatives include:</p> <ul style="list-style-type: none"> <li>• An advocate who is entitled to practice in any court in India.</li> </ul>
14.	b	<p>As per section 117, An appeal to the High Court can be filed only when a person aggrieved against the order passed by the State bench or Area bench of the Appellate Tribunal and for matters involving substantial questions of law.</p> <p>Analysing the various points:</p> <p>(i) The statement is correct</p> <p>(ii) The statement is incorrect, appeal against an order of National bench or regional bench shall lie with Supreme court.</p> <p>(iii) The statement is correct.</p>
15.	b	
16.	d	<p>As per section 121, the following are non-appealable/no revision orders:</p> <p>(a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or</p> <p>(b) an order pertaining to the seizure/retention of books of account, register &amp; other documents; or</p> <p>(c) an order sanctioning prosecution under this Act; or</p> <p>(d) an order passed under section 80.</p>



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