

ADJUDICATION AND APPEALS UNDER GST –
HOW FAR JUDICIOUS

By

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The Model GST Act, which is now come in June, 2016, by and large, follows the pattern of Central Excise and State VAT laws. It dispenses with two common causes of disputes viz. taxability and classification which led to vexed litigation between the Department and the Assessee. The taxable event being “supply”, almost nothing can escape the tax net. In the absence of a Tariff or Negative List, classification disputes may not be arise (subject of course to exemption notifications which will be issued in due course). Yet there may be two major causes of disputes (i) denial of Input Tax Credit (hereinafter called ITC) (ii) valuation of Goods and Services. There would be other causes of disputes such as (i) clandestine removal of goods (ii) raising of demand due to procedural non-compliance.

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2: Thus-far, in all matters of tax administration, the Central and State Tax laws have run parallel like never to meet each other. But, under the Model Law, they do converge at the second Appellate Stage before the National GST Appellate Tribunal.

3: The adjudication provisions is common to both Acts. The Section 51 is, more or less, equal to Section 11A of the Central Excise Act, 1944 and Section 73 of the Finance Act, 1994. Part A for raising of demand of tax in cases not involving fraud etc. Part B, where allegation of fraud are alleged. For demanding differential tax under Part A, the period specified for passing the order of adjudication (not for issuing the show cause notice) is 3 years from the date on which the Annual Return was filed, or the due date for filing such return (Section 51(7)). For instance, for the financial year 2017-18, under Section 30, annual return has to be filed on or before 31st December, 2018. Therefore, adjudication order under Section 51 – Part A can be passed any time before 31st December, 2021. Unlike, under Central Excise Law, the Show Cause Notice was required to be issued within a period of two years. But, however, no time was prescribed within which the order of adjudication was required to be passed.

4: For the cases falling under Part B of Section 51, the adjudication order has to be passed within five years, reckoned in the same manner. In the above illustration, if the case involves fraud, etc., the last date for passing the order would be 31st December, 2023. Thus, for any assessment year, the demand may fall on the assessee within three and three quarter years, or five and three quarter years from the end of the financial year. It is seriously apprehended that the Show Cause Notice may be issued near to the expiry of three years or five years as the case and the assessee would hardly be given any time to submit reply to the SCN – virtually leaving no time for grant of opportunity of personal hearing.

5: As far as ITC is concerned, there is another presumptive method of recovery, without providing for adjudication procedure i.e. issuance of SCN, Reply and personal hearing as was provided under Section 11A of Central Excise Act, 1944 or Section 73 of Finance Act, 1994. Section 29 prescribes matching of invoices with input credit claimed. If the credit claimed is excess, the supplier is allowed to rectify the same in the same month. Otherwise, the excess credit claimed is added to the output tax liability of the recipient of goods and services. This sum is payable with interest – Input Tax Credit, though availed but may not have been actually utilized, yet interest is payable which is very harsh. As per Section 28, the credits claimed initially are provisional in nature.

6: No appeal has been provided against these presumptive recoveries. No doubt, the right of appeal is a statutory right, and not a fundamental right. If the recipient of goods/service who is the claimant of credit is unable to justify the credit (with the cooperation of the supplier), there is no remedy against such a loss of credit. If the presumptive recovery is retained in the Final Act, it shall prove to be very harsh and also militate against the principle of natural justice. Besides the above, it may be open to challenge before the High Court by way of Writ Petition.

FIRST APPEAL UNDER THE CGST ACT:

7: The Model Law consists of two sets of Section 79 to 83. The Section 79 provides for first appeal to the First Appellate Authority. Since it is an appeal, it cannot be dismissed summarily and, therefore, required to be heard on

merits both on question of law facts. In Chacko and Anr. Vs. Mahadevan [MANU/SC/3566/2007](#) : AIR2007SC2967 , while dealing with the jurisdiction of Section 96 CPC, (which is akin to Section 79 of present Act) the Supreme Court laid down as under:

It may be mentioned that in a first appeal filed under **Section 96 CPC**, the appellate court can go into questions of fact.

8: The Supreme Court has observed that right of appeal is neither a natural right nor an inherent right. It does not exist unless expressly conferred by a Statute. Being a substantive statutory right, it has to be regulated in accordance with the law. CCI Vs. Steel Authority of India 2010(10) SCC 744.

9: In Hasmat Rai Vs Raghunath Prasad 1981 AIR SC 170, the Supreme Court observed that an appeal is only continuation of the original proceedings and the powers of the Appellate Authority are co-extensive with those of original assessing authority. In Tel Utpadak Kendra Vs. Dy CST 1981(48) STC 248 SC, an appeal in tax matters is a continuation of assessment proceedings and the appellate authority has all the powers which the original authority has in deciding the matters before it.

10: It may be kept in view that Section 4 of the Act which enumerates the Classes of Officers under the CGST Act specifies “First Appellate Authority”, placed in the list immediately after the Commissioners of GST or Additional Directors General of GST. Hence, it can safely be inferred that the First Appellate Authority will be of the rank of Commissioner of GST. It, therefore, manifestly appear that

under the GST law, Commissioners would no longer have any adjudicatory powers as is the case now under Excise, Customs and Service Tax - since all appeals from Section 51 lies to the First Appellate Authority. At the same time, there is no provision providing for allowing direct appeal from Adjudication Order to the National GST Appellate Tribunal. This pattern seems to have been borrowed from the Income Tax Act, 1961, which also does not confer adjudicatory powers on Commissioners of Income Tax.

DELAY BEYOND 30 DAYS:

11: Section 79 (1) provides for filing of an appeal before First Appellate Authority against any decision or order passed by the Adjudicating Authority. Now, therefore, question arises what is the meaning of the word “ Decision” or “order”.

“APPEAL FROM AN ORDER OR DECISION”

12: A similar phrase has been used in several statutes. The expression “any decision or order”, is of wide amplitude and would include all orders or decisions passed by the Board. **CF.KANTILAL SHAH V. CC 1982 ELT 902(CAL)**. The expression is wide enough to include interlocutory orders passed by the board. **CF. M.S.NAINA V. CC 1975 TAX LR 1351(CAL)**. An appeal against an order which did not decide the rights of the parties is maintainable. **GHARIB RAM SHARMA V. DAULAT RAM KASHYAB, (1994) 80 Com Cases.**

13: Where in a case before the Bombay High Court, during the pendency of an appeal against dismissal of a winding up petition, an application was made to CLB [now Tribunal under the 2013 Act] for appointment of an administrator for prevention of mismanagement under section 398 of 1956 Act[corresponding to section 241 of the 2013 Act] and the same was admitted under an order that the matters of mismanagement would not be raised in the winding up petition and an appeal was made to the same High Court against this order also. The court refused to dismiss it summarily but ordered that if an administrator was appointed by the CLB, 14 days' time should be given to any aggrieved party to prefer an appeal against an order. **THAKUR SAVADIKAR & Co. (P) LTD. V. S.S. THAKUR,(1996) 23, CORPT LA 170(BOM).**

14: An order of the CLB in a matter for reference to arbitration under section 8 of the Arbitration and Conciliation Act,1996 is not appealable in view of the fact that section 5 of that Act permits appeals to judicial authorities only in the matters specified in that section and the order of reference is not one of those matters. **HIND SAMACHAR LTD. VS. UNION OF INDIA (UOI) AND ORS. MANU/PH/0502/2008.**

15: In **VARDHAMAN DYE-STUFF INDUSTRIES P. LTD. V. MRS. M. R. SHAH, MANU/MH/0666/2007: [2009] 149 CompCas 345 (Bom)** it has been held as follows (headnote):

“In a petition filed under sections and 398 of the Companies Act, 1956, the Company Law Board held that no case of oppression had been made out by the shareholder. The Board, however, directed the company to purchase the shares of the shareholder. On appeal,

the company, challenged the operative part of the order of the Board as being contrary to law and impermissible.”

15.1: Held, allowing the appeal, that the shareholder had not made out any case for exercise of equitable jurisdiction to grant such relief as granted by the Board. There was no case of oppression and mismanagement or for winding up of the company on any just or equitable ground to bring the case under section 397 or 398 and/or even section 402 of the 1956 Act. The submission that the High Court may not disturb the order of the Company Law Board as section 10F referred to an appeal only on a question of law was not correct. The order, specially its operative portion, was perverse and not sustainable. The order was to be quashed and set aside.

16: It is an admitted case of the parties that the appellants herein had filed two petitions under Sections 397-398 of the Companies Act alleging oppression and mismanagement before the CLB in the affairs of **M/s TINNA AGRO INDUSTRIES LIMITED AND TINNA OIL AND CHEMICALS LIMITED**. During the pendency of the said petitions, applications under Sections 8 and 45 of the Arbitration Act were filed and by the impugned orders dated 20th July, 2010 passed by the CLB, the applications have been allowed and the matters have been referred to arbitration to be conducted in accordance with the rules of the conciliation and arbitration of the International Chamber of Commerce in London. What has been decided by the CLB are the applications filed under Sections 8 and 45 of the Arbitration Act and not the petitions under Section 397-398 of the Companies Act. The disputes raised in the main petitions under Sections 397-398 of the Companies Act have not been adjudicated. Rights of the parties C.A. NOS. 1701-1702/2010 in CO.A. (SB) Nos. 31-32/2010 5 under the Companies Act have not been decided. The CLB while passing the impugned orders dated 20th July, 2010 has adjudicated these applications under Sections 8 and 45 of the

Arbitration Act and whether in view of the conditions stipulated in the aforesaid Sections, the applications should be allowed. While doing so, CLB may have incidentally examined the provisions of the Companies Act but only for the purpose of deciding whether or not conditions stipulated in Sections 8 and 45 of the Arbitration Act are satisfied or not; and not for deciding the petitions under Sections 397-398 of the Companies Act.

17: Section 79(2) prescribes 3 months' time-limit for filing the appeal from the date of communication of the adjudication order. A further time up to a maximum of 30 days has been provided with an application seeking condonation of delay. However, the First Appellate Authority has no power to condone the delay beyond 30 days as has been held by the Supreme Court in the cases of Singh Enterprises Vs. CCE, Jamshedpur reported in [MANU/SC/0015/2008](#) : 2008 (221) ELT 163 (SC), Commissioner of Customs & Central Excise v. **Hongo** India (P) Ltd. [MANU/SC/0471/2009](#) : 2009 (236) ELT 417 (SC) and Saradha Travels v. Commissioner of Service Tax [MANU/TN/3324/2014](#) : 2015 (3) STR 433 (Mad.) has held that Commissioner (Appeals) has no power to condone the delay beyond the statutory period.

18: As a condition precedent for entertainment of an appeal, the Section 79(4) provides that appellant has to pre-deposit 10% of the adjudged dues which includes all demands of tax and penalty. Under the present law, penalty is excluded from the purview of "pre-deposit" for calculation of 10%. However,

under the proposed GST Law, it has been made more burdensome requiring the deposit of 10% of duty and penalty.

19: Section 79(7) allow the First Appellate Authority to hear any ground which may not have been urged in the grounds of appeal if the appellate authority is of the opinion that the failure to urgent that ground was neither willful nor unreasonable. After hearing the parties, appellate authority may (a) confirm (b) set aside (c) modify the order appealed against. However, there is no provision for remand being made by the Appellate Authority to the Adjudicating Authority. In the absence of any provision, the Appellate Authority is not empowered to remand the case to the Adjudicating Authority as has been held by the Supreme Court in the case of Miles India Ltd Vs. CCE MANU/SC/1073/2007 followed by Tribunal in the case of National Fertilizers Ltd Vs. CCE - MANU/CE/0092/2016.

FIRST APPEAL UNDER THE SGST ACT:

20: In contradistinction with Section 4 applicable to CGST, Section 4 applicable to SGST does not find mention of First Appellate Authority. Therefore, it appears that the existing practice under the State VAT laws, of appointing Joint Commissioners as the First Appellate Authority may continue under the SGST as well. However, the quantum of pre-deposit would be higher, but still less than the present VAT laws. Under Section 79(4), the Appellant-assessee has to deposit the admitted and undisputed tax in its entirety, and also deposit 10% of disputed tax and penalty. The limitation prescribed is same as under the CGST Act, i.e. 3 months from the date of communication of the impugned order.

REVISIONARY POWERS OF THE COMMISSIONER OF SGST.

21: The Commissioner of SGST is the Revisionary Authority under Section 80 of Model SGST Act. Similar power exists under the extant VAT laws, referred to as suo motu revision, or upon information received by him. The Section 80 provides that the Commissioner may pass order if he feels that any authority subordinate to him, is prejudicial to the interest of revenue, he may (i) stay the operation of the order for such period and (ii) after giving an opportunity of hearing, may pass such orders including enhancing or modifying or annulling the said decision or order. Since the law provides only one Commissioner for the whole State and, therefore, it would be humanly impossible for a Single Officer to decide the cases of Revision for the entire State. Since Section 4 specifies Special Commissioners of SGST, it is possible that the power may be delegated to such special Commissioners of SGST.

22: The unusual feature of Revisionary Power under Section 80 is that the Commissioner of SGST can revise all orders passed by officers subordinate to him, which would include First Appellate Order. Thus, under the SGST Act, there is no sanctity for quasi-judicial appellate order. It can be overturned by an Executive Authority like the Commissioner of SGST. This has always been so under the erstwhile General Sales Tax Acts and under the existing VAT laws. This militate against the principle of rule of law.

SECOND APPEAL COMMON TO THE CGST AND SGST.

23. Blissfully, proceedings under both CGST and SGST merge before the National GST Appellate Tribunal. Every State will have a branch of National GST Appellate Tribunal headed by a State President. There is a National President who will be the head of National GST Appellate Tribunal.

24: Section 82(1) provides that any person aggrieved by an order under Section 79 or Section 80, may prefer an appeal to Appellate Tribunal provides that the amount is not less than Rs. 1 lacs as provided in Section 82(2). Section 82(3) provides for filing of an appeal within a period of three months from the date of communication of order. The Hon'ble Supreme Court in Collector of Central Excise, Madras Vs. M/s. M.M. Rubber and Co., Tamil Nadu [MANU/SC/0550/1992](#) : 1992 Supp. (1) SCC 471 examined the provisions in the context of time for the commencement of limitation such as "from the date of decision or order". It has been held that limitation shall commence in the cases where a right of the party is to avail remedy of appeal etc. is concerned **from the date of communication** of the decision or order appealed against”.

25: The Section 82(3) stipulates that the appeal may be filed before Appellate Tribunal within a period of three months from the date of communication of the order. The Tribunal, may upon sufficient cause being shown, may further condone the delay of any number of days or months - in contrast to a period of 30 days upto which the First Appellate Authority can condone

the delay. The Supreme Court in the case of T K Joshi Vs. MIDC MANU/SC/0933/2012 has observed as under:-

No hard and fast rule can be laid down as to when the High Court should refuse to exercise its jurisdiction in favour of a party who moves it after considerable delay and is otherwise guilty of laches. Discretion must be exercised judiciously and reasonably. In the event that the claim made by the applicant is legally sustainable, delay should be condoned. In other words, where circumstances justifying the conduct exist, the illegality which is manifest, cannot be sustained on the sole ground of laches. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have a vested right in the injustice being done, because of a non-deliberate delay. The court should not harm innocent parties if their rights have in fact emerged, by delay on the part of the petitioners. Land Acquisition, Anantnag and Anr. V. **Mst. Katiji** and Ors., [MANU/SC/0460/1987](#) : AIR 1987 SC 1353; Delhi Rohtas Light Railway Company Ltd. v. District Board, Bhojpur and Ors., [MANU/SC/0110/1993](#) : AIR 1993 SC 802, Dayal Singh and Ors. v. Union of India and Ors. [MANU/SC/0058/2003](#) : AIR 2003 SC 1140 and Shankara Co-op. Housing Society Ltd. v. M. Prabhakar and Ors. [MANU/SC/0564/2011](#) : AIR 2011 SC 2161 :

26: Section 82(4) provides for filing of cross-objection by the Respondent. While filing cross-objections, though the final judgment is in favour of the Respondent, yet, the Respondent

may challenge the final judgment on the points which may be against him. Whenever the Department is filing an appeal challenging the decision of the First Appellate Authority, it is advisable to file cross-objections by the Respondent (who is a private party) and attach all documents viz. (SCN, Reply to SCN with all documents, copy of First Appeal, Copy of Adjudication Order and the copy of order of First Appellate Authority) as generally, the Department while filing an appeal before the Appellate Tribunal, do not attach all these documents and at the time of final hearing of the appeal, all the above documents are absolutely necessary to seek the attention of the Tribunal. The cross-objection can be filed within a period of 45 days from the receipt of copy of the decision and the party can raise all the points/contents/issues in the cross-objection –though the time for filing an appeal may have long expired. The cross-objections is, in fact, a disguised appeal.

His appellate powers, under Section 84(3) are that of a Single Member of the GST Appellate Tribunal. It is not certain as to whether the National President can preside over the proceedings in the State Branches of the Tribunal. There is certainly no mention of National Bench of the Tribunal.

27: The Section 81 provides for appointment of Judicial, CGST and SGST members. Under Section 84(2), the Benches will consist of three members hearing both CGST and SGST appeals. The formation of common Bench is a most welcome move inasmuch as there will be uniform case law development

under both CGST and SGST throughout the country. This is welcome since the chartered path is India as a Common Market .

28: The Division Bench of Bombay High Court in the case of Nidhi Textiles Vs. Commissioner of Customs MANU/MH/0980/2015, though no directly but some semblance of fraud, while dealing with the issue of “Pre deposit” has observed as under:-

We also find some force in the complaint of Mr. Desai that undue importance and weightage cannot be given only to one document such as a certificate but all other materials such as statements under Section [108](#) of the Customs Act. The overall and broad view has to be taken, therefore, it was not necessary to refer to all the statements and the role of a particular person in the alleged fraud and perpetrated on the public exchequer. It may be that a very **serious case** of fraud was brought before the Tribunal and in terms of the orders of the adjudicating authorities. However, the Tribunal has yet to decide as to whether there is a fraud, who is guilty and who can be punished for it.

29: Problems of parallel adjudication proceedings

The Union Finance Minister has often said that under GST, evasion will be detected more readily, as there two Authorities exercising jurisdiction over every taxable transaction. That, either the SGST or the CGST authorities or both, would detect

any non-compliance or evasion. It is unrealistic to expect the Authorities functioning under two laws to act in tandem and pass orders simultaneously.

This can also be a problem for the assesses. For instance, in respect of a given transaction, if both the State and the Central Authorities issues SCN, the adjudication and first appeal will follow independent course. Though they start together they may not culminate in passing of orders simultaneously. Thus, for instance, while SGST proceeding may culminate in an order and further appeal and perhaps second appeal also quickly, the proceeding under the CGST may be languishing at adjudication stage or first appellate stage. Thus, the assessee is compelled to manage two streams of litigation with attendant expenses, and with the possibility of being foisted with inconsistent orders. At the appellate Tribunal's stage order under one law may be passed which might either help or obfuscate the proceeding under the other law.

According to the information in the public domain, the States are seeking exclusive single control over both CGST and SGST transactions for small assesses upto a turnover of Rs. 1.5 crores per annum. If this is acceded by the Centre, then the SGST authorities would be passing orders under both CGST and SGST acts, much like the VAT officers passing orders under both VAT Acts and the CST Act.

This can be messy. In such a situation, the first appellate authority for CGST matter also would be Joint Commissioner of SGST. Would the adjudication orders passed in respect of these small assesses be subject to SMR power of Commissioner of

SGST, or will follow the first appellate procedure as provided under the CGST Act? Perhaps, it is premature to guess on these situations.

Appeal to the High Court and the Supreme Court

All orders passed by the National GST Appellate Tribunal are appealable to the jurisdictional High Courts, on substantial questions of law arising from the orders (Section 87). Thus, the Tribunal will be the last fact finding authority. Present time-limit of 180 days for filing the appeal has been retained. Appeals would be heard by a Division Bench of the High Court.

The right of appeal to the Supreme Court is restricted. After passing order under Section 87, the High Court may suo motu, or on an oral application of the party immediately after the judgment, certify that it is a fit case for appeal to the Supreme Court. Otherwise, all litigation ends at High Court stage. The Supreme Court has exclusive jurisdiction to hear appeal from the orders of the Tribunal if the place of supply is in dispute, or there is dispute between the Centre and the States as to the inter-State nature of a transaction.

Authorized Representatives

Under the VAT laws, Sale Tax Practitioners are registered by the Commissioners of Commercial Taxes and are allowed to practice under the State Commercial Tax laws. Usually, the STPs are graduates in commerce, or better qualified. They do tasks such as maintain books of accounts for the clients, file their periodic returns, appear before the Authorities in

assessment, reassessment, or SMR proceedings, and also represent the clients before the first appellate authority and the State Taxes Appellate Tribunal. This system may continue as far as SGST law is concerned up to first appeal proceedings, and the SMR proceeding before the Commissioner of SGST. Since the CGST and SGST laws are substantially similar, the STPs would also per force be compelled to assist their clients under the CGST law also. Similarly, retired departmental officers are also allowed to represent the assesseees. Section 86 of the model law which deals with representation by the assesseees does not yet, specify the qualifications of the authorized representatives.

APPELLATE AUTHORITY UNDER MODEL GST ACT

The Model GST Law has prescribed three tiers of taxes such as CGST, SGST and IGST. CGST and SGST would attract on intra-State supply of goods and/or services, IGST would attract on inter-State supply of goods and/or services. CGST and IGST to be levied and collected by the Central Government, whereas SGST to be levied and collected by each State Governments. GST regime has been framed with a dual Tax structure wherein CGST and IGST would be controlled by the Central Government and SGST would be controlled by the State Governments.

Every registered taxpayers or dealers have to comply and file returns relating to CGST, SGST and IGST taxes as per GST law. There is every chance of arising of disputes in respect of

levy or collection of taxes. Therefore, the model GST law has incorporated the various authorities to settle issues between taxpayers and tax collectors. The Model GST Law has proposed the following dispute resolution mechanism in GST regime as under:

1. GST Council.
2. Guidance Notes on GST Processes and GST Law.
3. GST dispute Settlement Authority.
4. Advance Ruling Authority.
5. Appellate Authority.
6. National Appellate Tribunal.
7. Appeal to the High Court.
8. Appeal to the Supreme Court.
9. Settlement of Cases.

The above cited dispute resolution mechanism in GST regime has proposed mainly on the basis of the existing statutory provisions of Central Excise Law, Customs Law, Service Tax Rules and Acts there-under. The model GST Act has prescribed the various dispute resolution mechanisms to settle disputes on CGST and SGST except the provision of settlement of cases. The aims of this topic to focus on Appellate Authority under Goods and Service Tax Act, (GST Act).

Meaning of Appellate Authority

Appellate Authority has not been specifically defined in Section 2 of the GST Act. The Appellate Authority means the First Appellate Authority constituted under Section 79 of the GST Act to adjudicate appeals arising out of the order or

decision of the adjudicating authority of the GST Act and Second Appellate Authority means the National Appellate Tribunal constituted under Section 81 of the GST Act, by the Central Government on the recommendation of the GST Council. Therefore, there are two types of Appellate Authorities under GST Act, namely First Appellate Authority and Second Appellate Authority or Appellate Tribunal to adjudicate the appeals relating to disputes on CGST, SGST. Apart from the said Appellate Authorities GST Act, has made provision of separate Appellate Authority for Advance Ruling, constituted under Section 96 of the GST Act.

Appeals under CGST Law

The Chapter-XVIII of the GST Act, 2016 has prescribed for Appeals, where Sections 79, 81, 82 and 83 shall be applicable for appeals under CGST Law, Sections 84 to 93 are common for CGST and SGST law.

First Appellate Authority

Section 79 having 15 sub-sections shall be applicable for appeals to First Appellate Authority on disputes relating to CGST law. The details of sub-section as under:-

- (1) Any person aggrieved by any decision or order passed against him under this Act by an adjudicating authority, may appeal to the prescribed First Appellate Authority.
- (2) The Commissioner of GST may direct any GST Officer subordinate to him to apply to the First Appellate Authority

for the determination of unsatisfied issue arising out of the decision or order passed by the adjudicating authority.

- (3) The authorized officer makes an application to the First Appellate Authority against an order sub-section (2), as if it were an appeal made against the decision of the adjudicating authority.
- (4) Every appeal under this section shall be filed within three months from the date on which the decision communicated to person aggrieved or the Commissioner of GST.
- (5) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.
- (6) No appeal shall be filed under sub-section (1) unless the applicant has deposited a sum equal to ten percent of the amount in dispute including amount of penalty imposed.
- (7) The First Appellate Authority shall give an opportunity to the appellant of being heard in person, if he so desires.
- (8) The First Appellate Authority may, if sufficient reason is shown at any stage of hearing of an appeal, grant adjournment of hearing time to time and no such adjournment shall be granted more than three occasions to a party.
- (9) During hearing stage of an appeal, First Appellate Authority allows an appellant for modification and mention

additional grounds of appeal was not willful or unreasonable.

- (10) The First Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. The order should be passed within the time-limit prescribed under this Act.
- (11) The order of the First Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.
- (12) The First Appellate Authority shall, when 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:

Provided that where the issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

- (13) On disposal of the appeal, the First Appellate Authority shall communicate the order passed by him to the appellant and to the adjudicating authority.
- (14) A copy of the order passed by the First Appellate Authority shall also be sent to the jurisdictional Commissioner of CGST or the authority designated by him in this behalf and the jurisdictional Commissioner of SGST or the authority designated by him in this behalf.

(15) Every order passed under this section shall, subject to the provisions of Section 83, 87 or 88, be final.

National Appellate Tribunal

Section 81 of this Act, prescribed for National Tribunal and the sub-section of the said Act as under:

- (1) The Central Government shall on the recommendation of the GST Council constitute a National Goods and Service Tax Appellate Tribunal. The same is called as the Appellate Tribunal.
- (2) The Appellate Tribunal shall be headed by a National President.
- (3) The Appellate Tribunal shall have one branch for each State, which shall be called as the State GST Tribunal.
- (4) Every State GST Tribunal will be headed by a National President.
- (5) Every State GST Tribunal shall consist of as many Members (Judicial), Members (Technical – CGST) and Members (Technical – SGST) as may be prescribed, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.
- (6) The qualifications, eligibility conditions and the manner of selection and appointment of the National President, the

State Presidents, and the Members shall be such as may be prescribed on the recommendations of the Council.

- (7) The National President and the State Presidents shall exercise such powers and discharge such functions as may be prescribed on the recommendations of the Council.
- (8) On ceasing to hold office, the National President, the State Presidents or other Members of the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.

Appeals to the Appellate Tribunal

Section 82 of this Act, prescribed for Appeals to the Appellate Tribunal and the details sub-sections are as under:

- (1) Any person aggrieved by an order passed by the First Appellate authority against him under Section 79 of this Act, may appeal to the Appellate Tribunal against such order.
- (2) The discretionary power has been conferred to the Appellate Tribunal to refuse to admit any such appeal, if the involvement of tax credit, amount of fine, interest, or penalty does not exceeds one lakh rupees.
- (3) In case of departmental appeal against the order of the First Appellate Authority, duly approved by the review committee, the Board may constitute such committee and

every committee shall consist of two designated officers of GST.

- (4) The Committee of designated officers of GST may, if the opinion of committee is that order passed by the First Appellate authority is not proper or legal, direct the GST officer with authorization to apply to the Appellate Tribunal against such order.
- (5) The appeal filed by the authorized officer to the Appellate Tribunal shall be considered as application filed under sub-section (1).
- (6) Every appeal under this section shall be filed within three months from the date on which the order against is communicated to the commissioner of GST, or as the case may be, the person preferring the appeal.
- (7) On receipt of notice, respondent party against whom the appeal has been preferred may, file a memorandum of cross-objection to the Appellate Tribunal, within forty five days of the receipt of the notice.
- (8) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the stipulated period under sub-sections (6) & (7) respectively, if it is satisfied with sufficient reason.
- (9) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be accompanied by a requisite fee. No such fee shall be payable in the case of the appeal

filed by the Commissioner of GST under sub-sections (5) and (7).

(10) No appeal shall be admitted before the Appellate under sub-section (1) unless the party has deposited a sum equal to ten per cent of the amount of duty, penalty in dispute arising from the said order, in relation to which the appeal has been filed.

(11) Every application made before the Appellate Tribunal –

- (a) In an appeal for rectification of mistake or for any other purpose; or
- (b) For restoration of an appeal or an application, shall be accompanied by a prescribed fee:

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of GST under sub-section (5).

Orders of Appellate Tribunal

Section 83 of this Act, has prescribed the procedure for disposal of the Appellate Tribunal orders as under:

- (1) 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 First Appellate Authority or to the original adjudicating authority, with such directions

as it may think fit, for a fresh adjudication or decision, as the case may be, after taking additional evidence, if necessary.

- (2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time, from time to 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 three times to a party during hearing of the appeal.

- (3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any mistake apparent from the record, if such mistake is noticed by it on its own accord, or is brought to its notice by the Commissioner of GST or the other party to the appeal within a period of three months from the date of the order:

Provided the Appellate Tribunal should allow the party to be heard in person before bring any amendment of order either reduce a refund or input tax credit or enhance tax liability of the party.

- (4) The Appellate Tribunal 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.
- (5) The Appellate Tribunal shall send a copy of every order passed under this section to the First Appellate

Authority, or to the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner of CGST and the jurisdictional Commissioner of SGST.

- (6) Every Order passed under this section shall, subject to the provisions of Section 87 or 88, be final.

Appeals under SGST Law

Chapter-XVIII of the Act, prescribed scope of Appeals and revision, Sections 79,80,81,82 and 83 shall be applicable for appeals under SGST Law. Sections 84 to 93 are common for CGST and SGST Law.

Appeals to First Appellate Authority

- (1) Any person aggrieved by any decision or order passed against him under this Act by an adjudicating authority, may appeal to the First Appellate Authority as prescribed.
- (2) Every appeal under this section shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the party preferring the appeal. The period of filing

appeal can be enhanced a further period of one month, if the First Appellate Authority is satisfied with sufficient reasons of delay shown by the party.

- (3) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.
- (4) No appeal shall be filed under sub-section (1) unless the party has deposited, -
 - (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 ten per cent of the remaining amount in dispute arising from the said order, in relation to which the appeal has been filed. In case of cases involving a dispute tax liability of Rupees Twenty Five crores or more, is serious case, where the department authorities to apply to the First Appellate Authority for ordering pre-deposit not exceeding fifty per cent of the amount in the dispute.

- (5) The First Appellate Authority shall give an opportunity to the Appellant of being heard, if he so desires.
- (6) The First Appellate Authority may, if sufficient reason is shown at any stage of hearing of an appeal, grant adjournment of hearing time to time and no such adjournment shall be granted more than three occasions to a party.
- (7) The First Appellate Authority may, at the bearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the omission of that ground from the grounds of appeal was not willful or unreasonable.
- (8) The First Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against:

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the First Appellate Authority is of the opinion that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been

wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the Appellant is given notice to show cause against the proposed order and the order is passed within the time-limit specified under Section 51.

- (9) The order of the First Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for the decision.
- (10) The First 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:

Provided that where the issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

- (11) On disposal of the appeal, the First Appellate Authority shall communicate the order passed by him to the appellant and to the adjudicating authority.
- (12) A copy of the order passed by the First Appellate Authority shall also be sent to the jurisdictional Commissioner of CGST or the authority designated by him in this behalf and the jurisdictional Commissioner of SGST or the authority designated by him in this behalf.
- (12) Every order passed under this section shall, subject to the provisions of Section 80, 83, 87 or 88, be final.

Revisional Powers of Commissioner

Section 80 of this Act, prescribed for Revisional Powers of Commissioner and sub-section of this Act, as under:

- (1) Subject to the provisions of Section 93 and any rules made there-under, the Commissioner may on his own motion or upon information received by him, call for and examine the record of any proceeding under this Act, and if he considers that any decision or order passed under this Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.
- (2) The Commissioner shall not exercise any power under sub-section (1), if.-
 - (a) The order has been subject to an appeal under Section 79 or under Section 82 or under Section 87 or under Section 88; or

- (b) More than three years have expired after the passing of the decision or order sought to be revised.
- (3) Notwithstanding anything contained in sub-section (2), the Commissioner may pass an order under sub-section (1) of any point which has not been raised and decided in an appeal referred to clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.
- (4) Every order passed in revision under sub-section (1) shall, subject to the provisions of Sections 83, 87 or 88, be final.
- (5) if the decision or order passed under this Act by an officer subordinate to the Commissioner involves an issue on which the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or as the case may be, the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period referred to in clause (b) of sub-section (2).
- (6) Where the issuance of an order under sub-section (1) is stayed by the order of a Court or Tribunal, the period of

such stay shall be excluded in computing the period of three years under sub-section (2).

- (7) For the purposes of this section, 'record' shall include intimation given by any officer subordinate to the Commissioner.

National Appellate Tribunal/Appeals to the Appellate Tribunal/Orders of Appellate Tribunal under SGST Law

Section 81 prescribed for National Tribunal, Section 82 prescribed for Appeals to Appellate Tribunal and Section 83 prescribed for Orders of Appellate Tribunal for dispute resolution in case of SGST, which are similar to the provisions as cited in the aforesaid para for filing appeals in case of CGST. So these provisions under Section 81, 82 and 83 are not once again repeated under SGST Dispute Resolution Procedure.

Procedure of Appellate Tribunal

Section 84 of this Act, prescribed procedure for Appellate Tribunal and sub-sections are as under:

- (1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the National President or the State Presidents from amongst the members thereof.
- (2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one Member (Judicial), one Member (Technical-CGST) and one Member (Technical SGST).

- (3) The single Bench of Appellate Tribunal would dispose of any case, 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 involved, does not exceed ten lakh rupees.
- (4) If the members of a Bench differ in opinion on any point, the majority opinion of members would be accepted, if the equal members are differ in any point, then points make a reference to National President or State President, who shall himself hear the points or refer the case for hearing more of the other members of Bench including those who first heard it and majority of these members opinion of the Appellate Tribunal shall be decided the case.
- (5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.
- (6) The Appellate Tribunal shall, for the purpose of discharging its functions, have the same powers as are vested in a Court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-
 - (a) Discovery and inspection;
 - (b) Enforcing the attendance of any person and examining him on oath;
 - (c) Compelling the production of books of account and other documents; and

- (d) Issuing commissions.
- (7) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 and for the purpose of Section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of Section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

Interest on delayed refund of pre-deposit.

Section 85 prescribed for payment of interest on delayed payment of refund of pre-deposit made under sub-sections 6 & 4 of Section 79 or under sub-sections 10 & 7 of Sections 82 of this Act, is required to be refunded to the party consequent to any order of the First Appellate Authority or the Appellate Tribunal and rate of interest specified under Section 39 of this Act.

Appearance by authorized representative

Section 86 prescribes for Appearance by Authorized representative before the Appellate Authorities.

- (1) Any person who is entitled or required to appear before a GST Officer appointed under this Act, or the First Appellate Authority or the Appellate Tribunal in connection with any proceedings under the Act, may,

otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this Section, appear by an authorized representative.

- (2) For the purpose of this section, “authorized representative” means a person authorized by the person referred to in sub-section (1) to appear on his behalf, being –
- (a) his relative or regular employee; or
 - (b) an advocate who is entitled to practice in any Court of India, and who has not been debarred from practicing before any Court in India; or
 - (c) any chartered accountant, a cost accountant or a company secretary, who holds a valid certificate of practice and who has not been debarred from practice; or
 - (d) any person has acquired such qualification as the Central Government (or the State Government) may, on the recommendation of the Council, prescribe for this purpose.

Other provisions of this Chapter as applicable to CGST and SGST Law: Section 87 of this Act prescribed for Appeal to the High Court and the procedures there-under, Section 88 of this Act prescribed for Appeal to the Supreme Court, Section 89 specified for Hearing before Supreme Court, Section 90 relates to sums due to be paid to the Government as a result of an Order passed by the Appellate Tribunal under Section 83 or order passed by the High Court under Section 87, Section 91 prescribed for exclusion of time taken for copy of the order

when the notice of the notice, Section 92 fixed such monetary limits for appeal not to be filed on certain cases, Section 93 prescribed certain parameters no appeal shall be appealable against decisions and orders passed by a GST officer.

Conclusion: To sum up, GST Act has provided various provisions of dispute resolution mechanism to settle dispute under CGST and SGST relating to levy/payment and collection of Tax in GST regime. Apart from the provisions of Appellate Authority prescribed under Sections 79,80,81,82 and 83 of the GST Act, GST Act also prescribed another set up of Appellate Authority under the provisions of Advance Ruling under Sections 94 to 105 of the GST Act to provide decisions or reply to question relation to intra-State supply of goods and/or services. The provisions of settlement of cases are incorporated under Chapter VIIA of the IGST Act to settle dispute relating to inter-State supply of goods and/or services including imported/export goods and services as per GST Law.