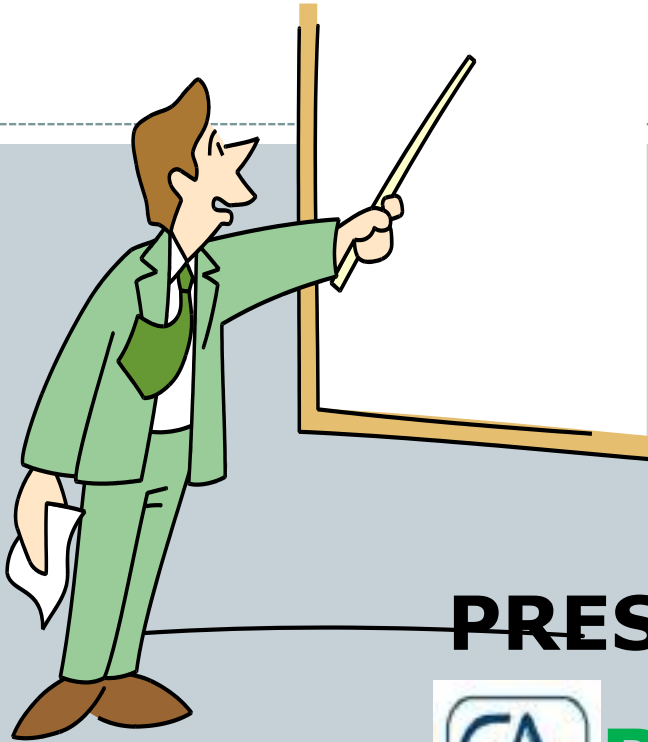


“Workshop on Appeal – First Appellate Authority and Tribunal”



Organized by
WIRC OF ICAI

PRESENTED BY



RAJIV LUTHIA

AN INVESTMENT IN KNOWLEDGE PAYS THE BEST RETURN

COVERAGE

- Provision related to Appeal along with few Issue
- Procedural Part
- General Mistake of Consultant
- Representation – A game changer
- Opportunities for CA's

Relevant Sections - Appeal

- Sec 107(1) - Appeal by aggrieved person
- Sec 107(2) & (3) – Appeal by department
- Sec 107(4) – Power to condone delay
- Sec 107(5) & (6) – Pre-deposit
- Sec 107(8) – Hearing opportunity
- Sec 107(9) – Power to grant adjournment
- Sec 107(11) – Passing of order and restriction on remand
- Sec 112 – Appeal to Appellate Tribunal

Important GST Forms in Appeal Proceedings

- Form GST APL 01 – Appeal to Appellate Authority
- Form GST APL 02 – Acknowledgment of filing appeal (issued by Appellate Authority)
- Form GST APL 05 – Appeal to Appellate Tribunal
- Form GST APL 04 – Summary of demand after issue of Order by the Appellate Authority, Revisional Authority, Tribunal or Court

CASE STUDY - 1

- M/s ABC was served with GST SCN – DRC 01 on 13th January, 2023.
- Reply to SCN filed on 9th Feb, 2023
- After PH, Ld. Assistant Commissioner passed Order upholding demand as alleged in SCN
- Order dated 1st March, 2023 served via email on 18th March, 2023.



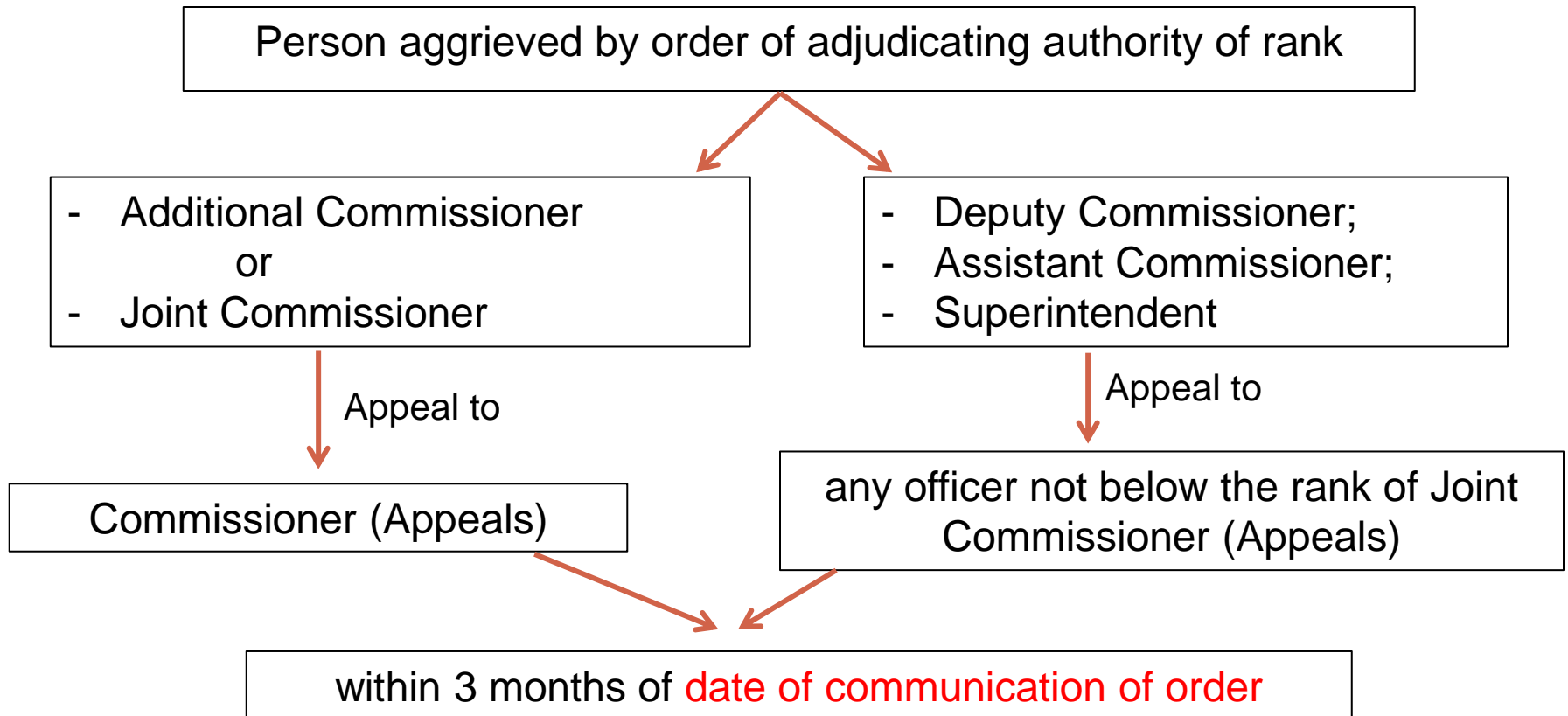
- Order was also sent by post on 18th March which was received by M/s ABC on 25th March, 2023.
- The order was uploaded on portal on 20th June, 2023?



ISSUES:

- Appeal against said order lie before which authority ??
- Whether appeal to filled manually or electronically?
- Time line for filing the Appeal??

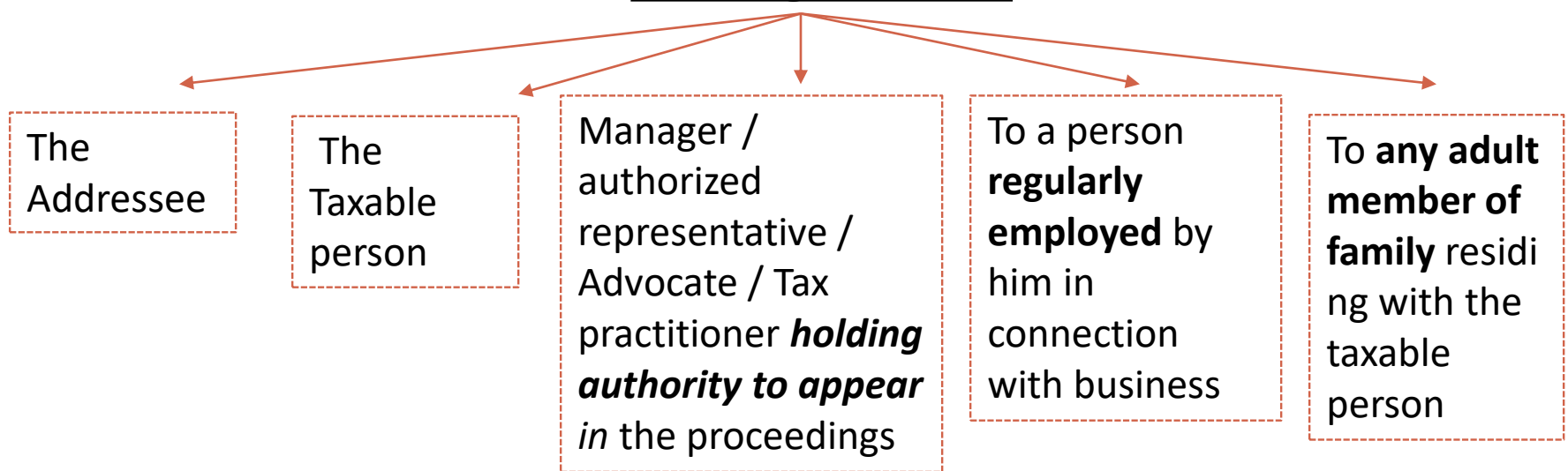
APPEAL TO 1st APPELLATE AUTHORITY - CCE (APPEALS) - Sec. 107



- In instant case, appeal lies before officer not below rank of Joint commissioner (Appeals)

Service of Notice/Order - Sec 169

➤ Tendering / courier to



➤ Registered post/speed post/courier - WITH ACKNOWLEDGEMENT DUE

- to person for whom it is intended or
- his authorized representative

at his last known place of business or residence

Service of Notice/Order - Sec 169

- **Registered E-mail**
- Uploading on **common portal**
- Publication in a **newspaper**
- Affixing it in some conspicuous place / on the notice board of the office of the concerned office
- ✓ **Wide coverage as compared to Section 37C of Central Excise**

Date of communication sec 169 viz-a-viz Rule 108

- **Rule 108(1)** An appeal to the Appellate Authority under Section 107 (1) shall be filed in **FORM GST APL-01**, along with the relevant documents, either **electronically** OR otherwise **as may be notified** by the Commissioner
- **No such procedure is notified till date in state of Maharashtra.**
- **ODISHA state government vide Notification No. CCT-PEI-POL-0155-2021-4450/CT & GST dated March 10, 2023 has issued guidelines regarding Filing of manual Appeal before 1st Appellate Authority.**

- ***Hon'ble Gujarat HC*** in case of ***Gujarat State Petronet Ltd V/s UOI 2020 (9) TMI 427*** held that Filing of appeal and uploading of the order are intertwined activities. The order is required to be uploaded online so that appeal can be filed electronically as per the mandate of the provisions of the Act and the Rules. However, there is no provision or procedure to file the appeal manually - In such circumstances, there was no failure on part of the petitioner to file the appeal within the prescribed period of limitation as the period of limitation did not start till the order passed by the adjudicating authority was uploaded on the GST portal.

Hon'ble Andhra Pradesh HC in case of **Navya foods Pvt Ltd v/s UOI**
2022 (5) TMI 695 held that

“The appeal is required to be filed in electronic mode and any other mode if prescribed by way of a notification. There is nothing on record to show that any notification was issued prescribing any other mode by which an appeal could be filed. Therefore, the argument of petitioner that the time period for filing appeal would start only when the order is uploaded in GST portal cannot be brushed aside. “

Order passed by Adjudicating Authority

UPLOADED on PORTAL

File Appeal **ELETRONICALLY** on common portal within 3 months from date of communication of said order (i.e. 3 months from date of upload on common portal)

Not UPLOADED on PORTAL and order intimated through POST/E-mail etc.

State in which Commissioner has notified Manually filing of Appeal

File Appeal Manually within 3 month from communication of order as per Notification issued

State in which Commissioner has notified not yet notified filing of Appeal

Rule 108 (1) – Appeal to be filed **Electronically**. Order is not uploaded, cannot file appeal Electronically.
Advisable to file Manually

Hon'ble Andhra Pradesh HC in case of ***SRI LAKSHMI VENKATESHWARA Vs. State of AP 2021 (4) TMI 498*** held that it is true that Rule 26(1) specifies that all applications including the appeals which are required to be submitted under the provisions of these Rules shall be so submitted electronically with a digital signature certificate or through e-signature or verified by any other mode of signature or verification as notified by the Chief Commissioner - So far as verification is concerned, Notification No.6/2017-Central Tax dated 19.06.2017 was issued by the G.O.I. Ministry of Finance, Department of Revenue, CBIC, stating that the mode of verification for the purpose of Rule 26(1) is (i) Aadhar based electronic verification code (EVC) and (ii) Bank account based one time password (OTP).

Thus apparently there is a discrepancy between Rule 108(1) and (2) with regard to the manner of filing the appeal and other documents. In view of the discrepancy, the benefit must go to the subject as it is a tax law.

Observation of Court:

The words “electronically” and “otherwise” are co-related with the two conjunctions i.e., “either” and “or”. Grammatically, these two conjunctions are used in co-relation with some words to indicate the alternativity or choice between the two persons, things, or events. In the instant case, the word “electronically” is prefixed with the conjunction “either” and the word “otherwise” is prefixed with the conjunction “or”. From this usage, what can be deduced is that the mode of filing is a choice between electronic and other form (usually, manual form), as may be notified by the Chief Commissioner. Since admittedly notification is yet to be given by the Chief Commissioner, appeal can be filed in either manner. The mandate of the word “shall” in Rule 108(1) applies to Form GST APL-01 but not to the word “electronically”. In my view, if the word “shall” was intended to govern the word “electronically” also, the word “either” would not have been posited immediately before the word “electronically” because the phrases “shall electronically” and “either electronically” are oxymorons

SERVICE OF ORDER - DEEMING PROVISION

Section 169(2) and (3) of the CGST Act, 2017 provides that an Order shall be DEEMED to have been served on the date of its tender or normal period taken for such tender to be completed, unless proved to the contrary.

*(2) Every decision, order, summons, notice or any communication **shall be deemed to have been served** on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).*

*(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it **shall be deemed to have been received** by the addressee at the expiry of the period normally taken by such post in transit **unless the contrary is proved.***

No such deeming provision existed in earlier service tax & excise regime.

Case Study – 2

- Case of M/S. POOR was selected for scrutiny & ASMT 10, DRC 01A and SCN in DRC 01 were uploaded on portal.
- No reply was filled in stipulated time, hence Order was passed ex-parte and uploaded on portal on 5th March, 2023
- However, M/S. POOR was not aware of any such proceedings initiated against him
- M/S. POOR thereafter received a recovery notice 15th July, 2023 and bank was attached for recovery. This is when Mr. Poor came to know about such Order passed against him.



Case Study – 2



- M/S POOR filed Appeal manually before Commissioner Appeals on 20th July, 2023
- M/S. POOR received PH notice requiring to explain as to why Appeal should not be rejected on ground that it was filled beyond time line?
- M/S. POOR seeks your advice

Time Line for filing Appeal

- Vide Sec 107(4) the Appellate Authority has the power to condone delay upto **ONE MONTH**
- Presently with the Tribunal not being functional till date, assessee has only option to approach the Hon'ble High Courts to get the delay condoned (on reasonable grounds).

Delay in filing Appeal

- **Hon'ble NEW DELHI CESTAT in case of JAGDISH ISPAT PVT LTD Vs. COMMISSIONER OF CGST 2020 (2) TMI 1008** has condoned the delay of 251 days observing that as per the provision of Section 35 of CEA, 1944, Commissioner (Appeals) doesn't have the power to condone the delay but Tribunal has the power to condone the delay under Section 5 of Limitation Act, 1963 and remanded back the matter to the Commissioner (Appeals) to pass the order on the merits of the case. It was observed by the Hon'ble Judicial Member, that appellant has shown sufficient cause for non filing of appeal beyond prescribed time limit, therefore it is imperative to condone the delay by taking the aid of Section 5 of Limitation Act.

Section 112 – Appeals to Appellate Tribunal

- *Section 112(1) - Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order 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 admit an appeal within three months after the expiry of the period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

Section 112 – Appeals to Appellate Tribunal

- Appellate Tribunal is constituted under Article 323B of Constitution and has its own separate Rules and regulation.
- Can the GST Act, 2017 restrict the power of Tribunal to condone delay in filing appeal only upto 3 months vide Section 112(6)?

APPEAL TO APPELLATE TRIBUNAL – Sec 112

- Vide Section 112 of the CGST Act, 2017 any person aggrieved by Order of 1st Appellate Authority shall prefer an Appeal to the Appellate Tribunal within 3 months of date of communication of Order
- Presently the GST Appellate Tribunal is not constituted.
- **Maharashtra Trade Circular 09T of 2020 dated 26th May, 2020** assessee are directed to file **Annexure I** with the Jurisdictional Officer **within 15 days from date of communication of Order**, intimating their intention to file Appeal against said order. If such declaration is not submitted within fifteen days from the communication of the said order, then it will be presumed that tax payer is not willing to file appeal against the order and recovery proceedings may be initiated as per the provisions of law.

Procedure to file Appeal on GST Portal

Navigate to User Services >>> My Application >>> Application Type >>> Appeal to Appellate Authority >>> New Application

Step 1 – Select type of order

1. Assessment Demand Order
2. Enforcement Order
3. LUT Order
4. Assessment Non Demand Order
5. Registration Order
6. Refund Order

Step 2 – Order reference number / ARN number

On punching of Order reference number details of date of order, demand, penalty etc., gets auto populated. **In case where date of filing appeal has lapsed, a tab requiring 'date of communication of order' pops up enabling to proceed further.**

Order Details

Order Date*

03/04/2018

Demand Id

ZA0704180000236

Date of communication*

03/04/2018

Step 3 – Select category of case under dispute

This is an exhaustive list with a provision of reason as OTHERS. One can select more than one reason for filing of appeal based on nature of order and demand upheld.

Category of the case under dispute*

Select

Select

1. Misclassification of any goods or services or both
2. Wrong applicability of a notification issued under the provisions of this Act
3. Incorrect determination of time and value of supply of goods or services or both
4. Incorrect admissibility of input tax credit of tax paid or deemed to have been paid
5. Incorrect determination of the liability to pay tax on any goods or services or both
6. Whether applicant is required to be registered
7. Whether any particular thing done by the applicant results in supply of goods or services or both
8. Rejection of application for registration on incorrect ground
9. Cancellation of registration for incorrect reasons
10. Transfer/Initiation of recovery/ Special mode of recovery
11. Tax wrongfully collected/Tax collected not paid to Government
12. Determination of tax not paid or short paid
13. Refund on wrong ground/Refund not granted/ Interest on delayed refund
14. Fraud or wilful suppression of fact
15. Anti profiteering related matter
16. Others

Step 4 – Period of Dispute

Step 5 – Payment of demand under order and pre-deposit

a. Amount of demand under dispute

- Utmost care to be taken while punching disputed amount of tax, interest (if quantified), penalty, fees, other charges

b. Amount of demand created

- Amount is auto populated as per demand order

c. Amount of demand admitted

- Auto calculated based on **(b - a)** above

- **Portal does not consider payment of admitted dues by DRC 03 as of today, hence make payment of admitted dues only at time of filling appeal**

DISPUTED AMOUNT/ PAYMENT DETAILS

Disputed Amount/ Payment Details

Amount under Dispute

Description		Central tax (₹)	State/ UT tax (₹)	Integrated tax (₹)	Cess (₹)	
Amount of dispute	Tax/Cess	0	0	0	0	
	Interest	0	0	0	0	
	Penalty	0	0	0	0	
	Fees	0	0	0	0	
	Other charges	0	0	0	0	

Amount Of Demand created and admitted

Description		Central tax (₹)	State/ UT tax (₹)	Integrated tax (₹)	Cess (₹)	
Amount of demand created (A)	Tax/Cess	0	0	33944	0	5
	Interest	0	0	10	0	
	Penalty	0	0	100	0	
	Fees	0	0	0	0	
	Other charges	0	0	10	0	

Amount of demand admitted(B)	Tax/Cess	0	0	33944	0	5
	Interest	0	0	10	0	
	Penalty	0	0	100	0	
	Fees	0	0	0	0	
	Other charges	0	0	10	0	

c. Details of Amount paid – amount admitted and pre deposit

- Pre deposit to the extent of 10% of amount of TAX DISPUTED. No pre deposit is required in case appeal is filed only for contesting interest/penalty

c. Utilize Cash/ITC

- Pre deposit and admitted dues can be paid out of available ITC (**position settled in *Jyoti Construction – Orrissa High Court*. Section 41 amended w.e.f. 1st October,2022**)
- For discharging admitted RCM liability – balance of ITC cannot be utilised.
- For IGST predeposit, portal requires break up qua POS

Details of payment of admitted amount and pre-deposit					
Pre-Deposit % of Disputed Tax/Cess		10		ⓘ Minimum of 10% of the disputed amount needs to be paid as Pre-deposit before filing an appeal. Lower percentage may be declared here with relevant approvals from the competent authorities.	
Details of payment required					
Description		Central tax (₹)	State/ UT tax (₹)	Integrated tax (₹)	Cess (₹)
Admitted Amount	Tax/Cess	0	0	33944	0
	Interest	0	0	0	0
	Penalty	0	0	0	0
	Fees	0	0	0	0
	Other charges	0	0	10	0
Pre-deposit (10% of Disputed Tax/Cess)	Tax/Cess	0	0	0	0

Details of payment of admitted amount and pre-deposit

Description		Central tax (₹)	State/ UT tax (₹)	Integrated tax (₹)	Cess (₹)
Amount Paid	Tax/Cess	0	0	0	0
	Interest	0	0	0	0
	Penalty	0	0	0	0
	Fees	0	0	0	0
	Other	0	0	0	0

Details of amount payable towards admitted amount and pre-deposit

Description		Central tax (₹)	State/ UT tax (₹)	Integrated tax (₹)	Cess (₹)
Balance payable	Tax/Cess	0	0	33944	0
	Interest	0	0	0	0
	Penalty	0	0	0	0
	Fees	0	0	0	0
	Other charges	0	0	0	0

Step 6 – Upload APL 01 – Appeal Memo & supporting documents

- APL 01 should be in PDF file format not exceeding size of 5MB
- Only 4 Supporting documents allowed - 5MB each

Step 7 – Verification and filing Appeal

Step 8 – Provisional acknowledgment / ARN generated

Provisional Acknowledgement on submission of Form of Appeal

i Please submit certified copies within 7 days to get appeal admitted.

Your appeal has been successfully submitted against AD070618000010S

GSTIN/Temporary ID/UIN	07AJIPA1572EO1X
Date of filing	14/06/2018
Time of filing	14:25
Place of filing	Bangalore
Name of the Taxpayer	ANGAD JASBIRSINGH ARORA
Address	1, MG, ECITY, Central Delhi, Delhi, 110019
Name of the person who is filing Appeal	ANGAD JASBIRSINGH ARORA
Amount of pre-deposit	₹3000

It is a system generated acknowledgement and does not require any signature.

DOWNLOAD

Step 9 – Submission of certified copy of order (HARD COPIES)

- Rule 108(3) states that certified copy of order shall be submitted within 7 days of filing appeal on the portal. ----- **It is advisable to file hard copies of entire set of appeal memo along with supporting documentary evidence in compliance of Rule 108(3)**
- Date of filing appeal will be ----- date of provisional acknowledgment if certified copies filed within 7 days ----- date of filing certified copies if furnished after 7 days of provisional acknowledgment ----- **care to be taken as regards to limitation**

Step 10 – APL 02

- APL 02 to be generated by authorized officer and to be uploaded on GST portal
- **Final acknowledgment of Appeal filed.**

Filing of Appeal against Order NOT uploaded on portal

- The above mentioned procedure shall not be applicable in cases where the order is not uploaded on GST portal
- In such case Appeal to be filed physically and acknowledgment in APL 02 to be obtained.
- Pre-deposit to be paid vide DRC 03

Reason for payment to be mentioned as **OTHERS – filing of Appeal and by reserving the right to claim refund of same if appeal decided in favor of Appellant**

OTHER POINTS TO BE NOTED

- **Hard copy of Appeal in Form GST APL 01 in duplicate along with all annexures to be filled physically.**
- **Copy of O-I-O to be certified by Adjudicating authority or Lawyer, Public Notary etc.**
- **Each page of APL 01 to be signed & stamped by appellant.**
- **Court Fee stamp of Re. 1/- each to be affixed on Form APL 01 & Certified Copy of O-I-O.**
- **Proper indexing and numbering of the appeal memorandum.**

GENERAL MISTAKES OF CONSULTANTS

Particulars	example
Identifying the specific allegation made in SCN	OIDAR vs. Intermediary
Legal provisions not cited in support of ground	Many times reply states that we are GTA and hence not liable to pay ST/GST without stating the legal provision and how appellant get covered in said exemption/RCM notification
Failure to identify technical errors at SCN level	SCN issued to specific GSTN only when multiple registration in same state. No need to cover details of entire state
No documentary evidence provided in support of contentions	Like Manpower Supply Agreement, government contracts, tenders, work orders not submitted.

GENERAL MISTAKES OF CONSULTANTS

Particulars	Remark
Providing short / brief reply instead of detailed explanation	Many a time it is seen that Consultant only provide short reply of 1-2 page instead of explaining the nature of business, legal provision etc.
All communications must be acknowledged (stamped by officer)	This is most important and all the communication must be acknowledged
Save proof of date of communication of notice/Order (Postal cover etc.)	
Verify the DIN of documents like OIO/ OIA	

FEW IMPORTANT DECISIONS.....

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- **Larger Bench of Hon'ble Delhi CESTAT in the case of Eicher Motors Ltd. Vs CCE, Indore (2002) TIOL 326** has held that there is no bar in the Act or in the Rules to the passing of consolidated orders by the adjudicating authority or the first appellate authority. A single appeal filed against such an order is not irregular only for the reason that the impugned order had dealt with more than one SCN.

- **Hon'ble Mumbai CESTAT in the case of Voith Paper Fabrics (I) Ltd Vs. Commissioner of Customs, Mumbai (2013) TIOL 749** held that

- when a common order is passed by CCE(Appeals) giving five separate numbers, then five separate appeals are required to be filed before CESTAT. One composite appeal filed before CESTAT against such common order will not suffice.

- The Hon'ble CESTAT distinguished the cases wherein only single appeal was filed against the order which was given only one number. It also distinguished the cases wherein adjudicating authority disposed the various SCN's by passing a single O-I -O.

Opportunities for CA's (Beyond Drafting & Representation)



GST ADVISORY SERVICES

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- Combination of knowledge of accounting as well interpretation of statute, CA's have an edge in
 - Identifying transaction eligible for ITC
 - Draft contracts and agreements to synergize with GST law
 - Recommend ERP systems implementation considering GST regulations
 - Periodical Client's training sessions
 - Integration of ERP along with the GST reporting software.



COMPLIANCE SERVICES

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- Forwarding formats for capturing data for uploading GSTR 1 , BSTR 3B etc.
- Verifying data on test check basis
- Verification of GSTR 3b & with GSTR 2B
- Verification of ITC reversal
- Other compliances like LUT, ITC 04 for Job work transactions etc.
- Checking & filling refund claims



PERIODIC HEALTH CHECK-UP

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- POS determination
- Eligible claim of ITC
- Find Excess or short ITC reversal
- Refund claims verifications
- Rate of GST on output
- Identifying Periodical compliances & calculation of interest on delays



TRANSACTION STRUCTURING

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- **CA's can expand their job beyond tax advisors to Business Consultants.**
- Transaction structuring considering other statute such as corporate Law, international taxation etc.
- Create standard operating procedures.



Any questions ????????



**WITH KNOWLEDGE WE KNOW THE WORDS,
BUT WITH EXPERIENCE WE KNOW THE MEANING**



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