

A photograph of a workspace on a wooden desk. In the background, a laptop is open. In the foreground, a notebook with a grid pattern is open, and a black pen with 'PRECISE' and 'V5' written on it lies on the page. The text 'DRAFTING OF APPEALS UNDER GST' is overlaid in white serif font on the left side of the image.

# DRAFTING OF APPEALS UNDER GST

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# Introduction

## What is Appeal?

- ❖ In Wharton's law Lexicon- The word 'appeal' is defined as the judicial examination of the decision by a higher court of the decision of an inferior court.
- ❖ It is a remedy provided by the law for getting a decree of lower court or authority corrected when a party to a litigation is aggrieved.

# Initiation of Litigation

- ❖ Culmination of efforts from the beginning of investigation/proceedings for contravention of provisions of the tax statute(s) till conclusion of investigation /proceeding by way of formal issuance of a written Show Cause notice (SCN) to the noticee(s).
- ❖ Comprising the findings of enquiry, proposing demand of tax, interest, penalty etc.

# Comparison

- **Direct v Indirect Taxes**
  - Pre deposit
  - Appeal against assessment/adjudication order by department
  - Manner of drafting
- **Pre GST v GST**
  - Limited power of condonation
  - Not more than three adjournments
  - Directory time limit of one year for disposal

# Initiation of Litigation

- ❖ First step towards litigation and no recovery without issuance of SCN
- ✓ M/s LC Infra Projects Pvt Ltd vs UOI [2019 – TIOL – 1660 – HC – KAR – GST dated 22.07.2019]
- ✓ Assistant Commissioner CGST, Chennai versus M/s Daejung Moparts Pvt Ltd [2020 – TIOL – 358 – HC – MAD - GST]
- ✓ Mahadeo Construction company versus UOI [2020 – TIOL – 850 – HC – Jharkhand] dated 21.04.2020

# Initiation of Litigation

- ❖ SCN has to be specific and not to be issued based on assumptions and presumptions
- ❖ The adjudication order cannot go beyond the scope of SCN and demand levied therein cannot be increased.

# Appealable Order

- ❖ All the order against which appeal can be filed are known as appealable orders.
- ❖ Therefore, all the orders of the adjudicating authority or any other order passed by any officer other than those mentioned under Section 121 of the CGST Act are known as appealable orders.

# Non-Appealable order

- ❖ Section 121 of the CGST Act specifies certain order against which appeal cannot be filed in any court.
- ❖ These orders are:
  - ❖ an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another office;
  - ❖ an order pertaining to the seizure or retention of books of account, register and other documents;
  - ❖ an order sanctioning prosecution under this Act;
  - ❖ an order passed under section 80. (payment of tax in installments)



# Statutory Provisions

<u>Particulars</u>	<u>Sections</u>	<u>Rules</u>
Appeal to Appellate Authority	107	108,109 and 112
Appeal to GST Tribunal	112	110, 111 and 112
Appeal to High Court	117	114
Appeal to Supreme Court	118	115

# Appeal Hierarchy

Upon issuance of Adjudication Order

## First Appellate Authority

- u/s 107 of CGST Act.
- Within 3 + 1 months from date of communication.

## Appeal to Tribunal

- u/s 112 of CGST Act.
- Within 3 + 3 months from date of communication

## Appeal to High Court

- u/s 117 of CGST Act.
- Within 180 days + as may be allowed by High Court.

## Appeal to Supreme Court

- u/s 118 of CGST Act.
- Within 60 days from date of Communication

# Structure of Appeal

- ❖ Applicable Form - [GST APL-01 – Commissioner Appeal / GST APL-05 - Tribunal]
- ❖ Statement of Facts
- ❖ Grounds of Appeal
- ❖ Prayer
- ❖ Verification

# DRAFTING

Statement of  
Facts

- Actual Position

Finding/Dept.  
Case

- Basis on which demand is confirmed

Grounds of  
Appeal

- Contentions of Appellant

# Findings/ Observations

- ❖ Read the Order thoroughly and underline all the findings recorded therein.
- ❖ Analyze the relied upon documents (RUDs) in SCN, Financial Statements and other documents carefully.
- ❖ Reproduce the relevant extract of findings for further references and summarize the same.
- ❖ Compare the findings recorded in the order vis-à-vis the allegations levelled in the SCN.

## Statement of Facts

- ❖ First step is to have complete control over the facts of the case.
- ❖ Statement of facts ought to be framed with clarity.
- ❖ Understand the business and nature of activities carried out by the Appellant [financials, [web-sites](#), personal interaction etc.] and the transaction in dispute.
- ❖ Mention in brief about the Appellant, nature of business and the events leading to the present Appeal

## Statement of Facts

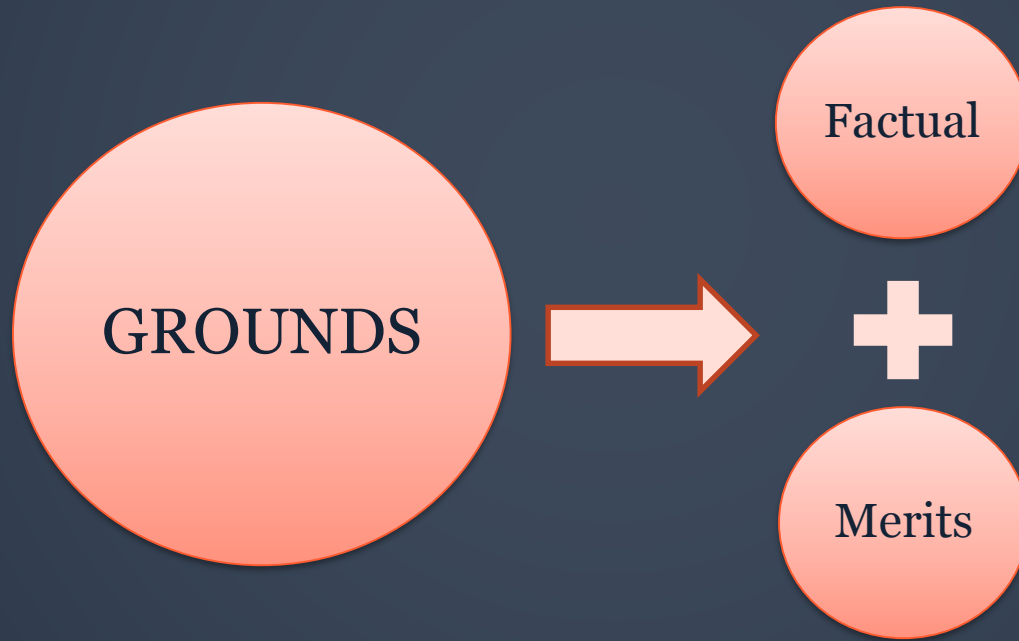
- ❖ Write the facts with reference to the allegations leveled at the time of issuance Show Cause Notice and the findings recorded in the order.
- ❖ Summarize the findings of the order precisely.
- ❖ Make sure that the Appellate Authority understands the whole case while reading the facts only. Appellate Authority should not feel the need to read the order.

# Grounds of Appeal

- ❖ Widest possible grounds should be taken in Appeal.
- ❖ Grounds of appeal should be simple, clear, precise, concise and without any ambiguity.
- ❖ In case of more than one issue involved in Appeal, draft separate ground for separate issue.
- ❖ In case of more than one ground involved in Appeal, preference of grounds should be decided.
- ❖ Avoid using long sentences.



# GROUNDS





FACTUAL

# JURISDICTION

- ❖ Ensure whether authority passing the order had jurisdiction to pass the order.
- ✓ Governed by the provisions of **Section 3 to Section 6** of CGST Act, 2017.
- ✓ **N/N – 02/2017** – CT dated 19.06.2017 specifies the jurisdiction.
- ❖ **Monetary limits** are also to be verified

# DIN

- ❖ CBIC vide its **Circular No 128/47/2019 – GST** has mandated that in all the communications (except in exceptional circumstances) with the assessee (including on e-mails), Document Identification No is required to be mentioned.
- ❖ DIN can be confirmed by the assessee online at **Cbic.gov.in**
- ❖ All the communication with the assessee which does **not contain** DIN shall be treated **invalid** and shall be considered as never been issued.

# PRE SCN CONSULTATION

- ❖ Pre-SCN consultation was mandated under indirect taxes by CBIC vide Master Circular dated 10.03.2017
- ❖ Under Customs, CBIC notified Pre-notice consultation regulations 2018 dated 02.04.2018 which provided the manner for pre-SCN consultation
- ❖ Rule 142 (1A) has been inserted under GST w.e.f. 09.10.2019 to mandate the pre-SCN consultation in FORM GST DRC – 01A

# PRE SCN CONSULTATION

## ❖ Amadeus India Pvt Ltd vs Principal Commissioner, Central Excise, Service Tax [2019 (5) TMI 669 – Delhi HC]

*18. In the present case, the Court is satisfied that it was necessary in terms of para 5.0 of the Master Circular for the Respondent to have engaged with the Petitioner in a pre SCN consultation, particularly, since in the considered view of the Court neither of the exceptions specified in para 5.0 were attracted in the present case.*

*19. Accordingly, without expressing any view on the merits of the case of either party in relation to the issues raised in the impugned SCN, the Court sets aside the impugned SCN dated 4th September, 2018 and relegates the parties to the stage prior to issuance of impugned SCN.....*

# MODE OF SERVICE

## Sec. 169 of CGST Act, 2017 (Applicable where no specific mode provided in section)

Initial modes	<ul style="list-style-type: none"><li>• By tendering directly or through registered post / speed post / approved courier with acknowledgement due or proof of delivery</li><li>• By sending communication to registered e-mail id.</li><li>• <b>By making it available on GSTN portal</b></li><li>• By publication in a local newspaper</li></ul>
To be followed at last	If not-serviceable in above manner, by affixing to a conspicuous (attracting notice/attention) part of the place of business or usual place of residence
	If cannot be serviced in above two ways, then by affixing on the Notice Board of the Officer or the authority issuing the Notice

# MODE OF SERVICE

❖ *If any of the initial mode is not practicable then by affixing at some conspicuous place at the place of business or residence*

✓ **M/s Kashi Bartan Bhandar versus State of UP and ors [2018 – TIOL – 2897 – HC – ALL – GST]**

*In view of the above, we are of the definite opinion that the petitioner was not served with any show-cause notice before passing of the impugned order and service through affixation could not have been resorted to in the facts and circumstances of the case. The order impugned, therefore, is in violation of the principles of natural justice.*



# MODE OF SERVICE

❖ *If any of the aforesaid mode is not practicable then by affixing at some conspicuous place at the place of business or residence*

✓ **RAM PRASAD SHARMA VERSUS THE CHIEF COMMISSIONER AND ANOTHER [2020 (11) TMI 787 – MP HC]**

*The State in its reply has provided no material to show that show-cause notice/order No.10 dated 10.06.2020 was uploaded on website of revenue. In fact, learned AAG, Shri Mody, fairly concedes that the show-cause notice/order was communicated to petitioner by Email and was not uploaded on website of the revenue - It is trite principle of law that when a particular procedure is prescribed to perform a particular act then all other procedures/modes except the one prescribed are excluded. This principle becomes all the more stringent when statutorily prescribed as is the case herein.*

# LIMITATION PERIOD

- ❖ Order cannot be issued beyond the time limit mentioned u/s 73(10) and 74(10).
- ❖ In view of Section 74 (2), SCN is required to be **issued** at least 6 months prior to the time limit of issuing order which is 5 years from **“DUE DATE”** for furnishing annual return of relevant f/y or date of erroneous refund [i.e. within 4 years 6 months from due date of annual return].

Annual Return f/y 17-18: 31.01.2020,  
Order can be passed up to 30.01.2025. Order passed after this date  
is invalid.

SCN issued after 31.07.2024 will be time - barred

# Order traversing beyond SCN

- ❖ The adjudicating authority has to pass his order within the parameter of the allegations levelled in the show cause notice.
- ❖ In the case of Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd. [(2006) 7 SCC 592], the apex court while delivering judgment under para 16 held that, the department cannot travel beyond the scope of the show cause notice.

# Order traversing beyond SCN

- ❖ Further in the case of *CCE v. Ballarpur Industries Ltd. [(2007) 8 SCC 89]*, the apex court held that it is trite that the foundation of Revenue's case is laid in the show cause notice and the same must be confined to the allegations therein.
- ❖ A similar view was adopted in the case of *M/s Jetlite (India) Ltd. v. CCE New Delhi [2010 TIOL 1715 CESTAT Del.]*, where it was held that the adjudicating body did travelled beyond the scope of the show cause notice was not legal and thus the previous judgment with regard to payment of service tax was dismissed.

# SUMMARY

Jurisdiction

DIN

Mode of  
service

Limitation  
Period

Pre-SCN  
consultation

Order  
traversing  
beyond  
SCN

# ACTUAL DEFAULT

- ❖ Pay amount of tax and interest within 30 days of issuance of SCN and penalty will be waived [Section 73 (8)]
- ❖ Pay amount of tax, interest and penalty (equal to 25% of tax), within 30 days of issuance of SCN [Section 74(8)]
- ❖ Where any person served with an order issued under sub-section 74(9) (Adjudication order) pays the tax along with interest payable thereon and a penalty equivalent 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded. [Section 74(11)]

# ACTUAL DEFAULT

- ❖ Tax liability is to be discharged on cum-tax basis [Rule 35]
- ❖ If there is no default and assessee wants to litigate, move to grounds on merits
- ❖ Advise to comply in future



Legal



# Principles of Natural Justice

- ❖ Opportunity of being heard.
- ❖ Non-speaking order
  - ❖ Submissions of the Appellant not considered
  - ❖ Findings not recorded in the order
  - ❖ No detailed discussion of the case

# Opportunity of being heard

- ❖ Principle of *Audi Alteram Partem*.
- ❖ Before passing any order, an Opportunity of personal hearing should be granted to the person aggrieved.
- ❖ The Opportunity should be granted at least three times before passing any order.

# Opportunity of being heard

- ❖ In the case of Harbans Lal v. Commissioner [1993 (67) E.L.T. 20 (SC)] it was held that if the order is passed by the authority without providing the reasonable opportunity of being heard to the person affected by it adversely will be invalid and must be set aside.
- ❖ In the case of CIT v. Panna Devi Saraogi [1970] 78 ITR 728 (Cal.), it was held that the opportunity of being heard should be real, reasonable and effective. The same should not be for name sake. It should not be a paper opportunity.

# Non-Speaking

- ❖ Non-Speaking orders are not valid in the eyes of law.
- ❖ All submissions of the Appellant, documentary evidences submitted should be considered.
- ❖ The order should contain the detailed discussion of the case and the findings of the authority.
- ❖ The order be clear on the basis of which it has been passed.
- ❖ As held in *Kishan Lal v. UOI [1998] 97 Taxman 556 (SC)*, a speaking order reduces arbitrariness. A reasoned order speaks for itself.

# Non-Speaking

- ❖ In the case of TATA ENGINEERING & LOCOMOTIVE CO. LTD. VERSUS COLLECTOR OF C. EX., PUNE [2006 (23) E.L.T. 360 (SC)], the Apex Court held that the tribunal while passing the order has not recorded the findings in detail and therefore set aside the order being cryptic and non-speaking.
- ❖ In State of Punjab v. Bhag Singh, 2004 (164) E.L.T. 137 (S.C.), the Apex Court was considering a case where the High Court had dismissed the appeal without giving any reasons. The Court held that reasons introduce clarity in an order. On plainest consideration of justice, the High Court ought to have set forth its reasons, howsoever brief, in its order indicative of an application of mind, all the more when its order is amenable to further avenue of challenge. The absence of reasons has rendered the High Court order not sustainable.

# RELEVANT PROVISIONS

- ❖ GST Provisions have changed constantly
- ❖ SCN must be issued in accordance with the provisions applicable at the time of supply such as:
  - ✓ *No demand of RCM on supplies from URP w.e.f. 13.10.2017*
  - ✓ *No demand on Developer under RCM prior to 01.04.2019*
  - ✓ *Disallowance of Input Tax Credit on certain supplies w.e.f. 01.02.2019 [Motor vehicles > 13 passengers]*

# INTERPRETATION

Allegations leveled due to interpretation of law in different manner such as:

- ❖ Demand of ST/GST on **transfer of Land Development Rights**
  - ✓ Not a supply in view of Schedule III
- ❖ **Composite Supply versus Mixed Supply**
  - ✓ Intention of the parties derived from Agreement
  - ✓ 'Naturally Bundled' Case Laws from Service Tax

# INTERPRETATION

## ❖ Notice Pay Recovery

- ✓ Employer has not 'tolerated' any act of employee but has permitted a sudden exit in lieu of compensation: **M/s GE T & D India Ltd. vs. DC of Excise - [2020-VIL-39-MAD-ST]** dated 07.11.2019.

## ❖ Denial of Exemption

- ✓ Scope of exemption entry.
- ✓ **Exemption Notifications are subject to strict interpretation** – CCI vs. Dilip Kumar & Co. [2018 (7) TMI 1826 - SUPREME COURT] dt. 30.07.2018. Distinguished in Mother Superior Citation ???

## ❖ Intermediary Services provided to foreign entities

- ✓ Scope of Services as per terms of agreement
- ✓ Manner of Consideration



# INTERPRETATION

## ❖ Dispute w.r.t. Transaction Value

- ✓ Settled Case Laws from Excise Laws

## ❖ Amount incurred as 'pure agent' included in value of supply

- ✓ Conditions of Rule 33 are to be complied with
- ✓ Relevant Case Laws from Service Tax

## ❖ Classification of Goods

- ✓ Interpretation of relevant Entry from CTA, 1975
- ✓ Decided Case Laws from Customs Act, 1962

# PROCEDURAL LAPSES

- ❖ **Substantive benefits cannot be denied** on basis of procedural lapses.
  - ✓ Credit cannot be denied for **no mention of STC of recipient** on tax invoice. (Procedural lapse on part of service provider)
  - ✓ Seeking registration under GST for availing ITC is **not procedural**. [Sec. 16(1) of CGST Act]
- ❖ **TRAN-1 judgments** under GST are based on this principle.

# PROCEDURAL LAPSES

- ❖ *M/S SIDHARTH POLYSACKS PVT. LTD. VS. COMR (APPEALS), CGST, CCE, JAIPUR [2020 (3) TMI 197 - CESTAT NEW DELHI] dated 11.02.2020*
- ❖ “It is seen that the credit was availed by the appellant after reflecting the same in their *RG-23A Part-I and Part-II registers. It is well settled law that substantive benefit cannot be denied on the basis of procedural lapses, if any.* The appellant had their head office and the address stands shown inasmuch as orders might have placed from the head office”

# PROCEDURAL LAPSES

## ❖ *Dal Chand versus Municipal Corporation, Bhopal and another, 1984 (2) SCC 486*

*:"... There are no ready tests or invariable formulae to determine whether a provision is mandatory or directory. The broad purpose of the statute is important. The object of the particular provision must be considered. The link between the two is most important. The weighing of the consequence of holding a provision to be mandatory or directory is vital and, more often than not, determinative of the very question whether the provision is mandatory or directory....."*

# COMPUTATION ASPECTS

- ❖ Best Judgment Assessment cannot be made on **arbitrary basis**.
- ❖ **Manner of recording a transaction in books of account** cannot be a basis for determining tax liability.
  - ✓ ***M/s Deltax Enterprises vs CCE, New Delhi*** [2017 (12) TMI 966 – CESTAT – Delhi]  
“In the **absence of specific allegation** with reference to the **nature of service or the service recipient** it is not tenable to hold an income of the appellant even if it is **admitted to be an actual income**, as **consideration for a taxable service**.”

# COMPUTATION ASPECTS

Difference between Balance Sheet, 26AS, & ST-3 Returns

- ❖ **M/S M.P. LADHU UDYOG NIGAM LTD** Vs. CCE & ST, BHOPAL [2018 (2) TMI 1410 - CESTAT NEW DELHI] dated 15/01/2018
- ❖ “..SCN *did not give any reason to allege short levy except the difference between balance sheet and the ST-3 returns..In the present case, neither the notice nor the lower authorities have justified the demand for short levy or short payment of tax with any **cogent reason**. The burden of explaining the difference amount being not taxable income has been shifted to the appellant. This will be against the very basis of tax levy. It is the Department which alleged short payment and at least **basic preliminary supporting evidence** of such short payment has to be made *so that the appellant can defend their case.**”

# SUMMARY

Non-  
Speaking

Relevant  
Provisions

Interpretations

Procedural  
Lapse

Computation  
Aspects

# COMMON GROUNDS

## ❖ EXTENDED PERIOD

- Invoked in case of allegations fraud, wilful – misstatement or suppression of facts to evade tax [Section 74]
- Grounds for extended period
  - ✓ *Regularity in filing returns*
  - ✓ *Proper recording of transactions in the books of accounts*
  - ✓ *Co-operation with the department during inquiry proceedings*



# COMMON GROUNDS

- ✓ *Mere identification of non-payment during audit cannot be a ground for invoking extended period [M/s Thyssenkrupp Industries India Pvt Ltd versus CCE&ST, Pune (2018 – TIOL – 3828 – CESTAT – MUM)]*
- ✓ *Interpretation issue*
- ✓ *Contradictory decisions of courts or other appellate authorities.*
- ✓ *Subsequent SCN*
- ✓ *Where a trade practice is being followed*
- ✓ *Revenue neutrality*
- ✓ *Assessee is a Government Organisation*
- ✓ *Bonafide Belief*

# COMMON GROUNDS

## ❖ CUM - TAX

- ✓ In terms of Rule 35 of the CGST Rules, 2017, in cases where GST is not charged, value is to be considered as cum-tax

## ❖ INTEREST

- ✓ Compensatory in nature [Pratibha Processors vs UOI]
- ✓ In case of demand of ITC, check whether utilized or not

# COMMON GROUNDS

## ❖ PENALTY

- ✓ *No Mens rea*
- ✓ *No malafide intention to evade payment of tax*
- ✓ *No suppression of facts in case of information available in public domain*
- ✓ *Transaction recorded in books*
- ✓ *Interpretation issue*
- ✓ *Contradictory decisions of courts or other appellate authorities.*
- ✓ *Revenue neutrality*
- ✓ *Assessee is a Government Organisation*

# MISCELLANEOUS

- ❖ File condonation of delay in case appeal is not filed on time.
- ❖ Pay proper fee to be paid when appeal is filed to Tribunal i.e., Rs. 2000 per Lac subject to maximum of 50 thousands (25C + 25S)
- ❖ Whether tax which is self – assessed or which has been collected from the recipient has been deposited.
- ❖ If required, deposit under protest.
- ❖ Mention page no each page including the annexures attached.
- ❖ Proviso to Section 116 inserted but yet to be notified. Appeal against seizure of goods and vehicle 25% of penalty to be paid

# MISCELLANEOUS

- ❖ Make an Index clearly showing all the documents attached.
- ❖ Whether amount deposited by the assessee has been appropriated.
- ❖ External evidences are more reliable than internal.
- ❖ To be drafted on exhaustive basis and all grounds should be taken 'without prejudice to each other'.

# MISCELLANEOUS

- ❖ Reference from the favourable circulars issued by the department.
- ❖ Request for additional grounds
- ❖ Opportunity of being heard is a matter of right but to be specified [Section 75 (4)]
- ❖ Only 3 adjournments can be sought on the basis of **sufficient** cause [Section 75 (5)].
- ❖ Ensure that all enclosures are legible.

# MISCELLANEOUS

- ❖ Time limits are required to be strictly followed:
  - ✓ Appellate Authorities: Within 3 months (+ 1 month)
  - ✓ Appellate Tribunals: Within 3 months ( + 3 months COD)
- ❖ Maximum 3 adjournments can be sought from Appellate Authority.
- ❖ Commissioner Appeal – Order passed by Addl. Commissioner/Joint Commissioner
- ❖ Joint Commissioner Appeal – Order passed by AC/DC/Suptd.

# MISCELLANEOUS

- ❖ To be Filed in prescribed formats:
  - ✓ Appellate Authority: GST APL – 01
  - ✓ Appellate Tribunal: GST APL – 05
- ❖ Pre-deposit required for filing of appeals:
  - ✓ Appellate Authority: 10% of Tax in dispute (Max Rs 50 Cr)
  - ✓ Appellate Tribunal: 20% of Tax in dispute (Max Rs 100 Cr)
  - ✓ Admitted liability to be deposited in full



## Other important points

- ❖ All the grounds taken in SCN should be taken in Appeal as well.
- ❖ Additional Grounds on the basis of discussion and findings.
- ❖ Address all the findings recorded by the authority.
- ❖ Try to provide evidences in respect of all your submissions.
- ❖ Remember to rebut all the case laws relied upon by the authority.
- ❖ Ensure politeness but firmness in all communications with tax authorities.

# ADDITIONAL GROUNDS

- ❖ Additional Legal Ground can be added at the discretion of Appellate Authority [**Section 107(10)**]
- ❖ Additional evidence before Appellate Tribunal [**Rule 112**]:
  - ✓ *Adjudicating/Appellate Authority refused to admit*
  - ✓ *Applicant was prevented by the sufficient cause*
  - ✓ *Order passed without giving opportunity of being heard*
  - ✓ *Reasons to be recorded in writing*
  - ✓ *Can suo moto call for any evidence*

# Additional Grounds

- ❖ The Appellate Authority can accept the additional grounds which are not included in the Grounds of Appeal at the time of hearing.
- ❖ However, such addition shall be allowed to make only if the Appellate Authority is satisfied that omission of that ground was not willful.

## Cautions while quoting any judgment

- ❖ Develop and maintain a good library in the office. Subscribe to more than one law journal for reference including electronic versions.
- ❖ Before citing any judgment ensure that it has not been overruled.
- ❖ In case a stay has been granted for any judgment by the higher courts, then such case laws cannot be relied upon.

# Cautions while quoting any judgment

- ❖ Read the whole judgment carefully and explain how the same is applicable in your case.
- ❖ Do not rely on the head note of any judgment. Read the relevant para and quote the same.
- ❖ Quote the case laws of higher courts of the same jurisdiction as the adjudicating authority are bound to follow the same. The Hon'ble Supreme Court in the case of Union of India v. Kamlakshi Finance Corporation Ltd, [1991(35) E.L.T.433(S.C.)], held that “The adjudicating Officer acts as a quasi-judicial authority. He is bound by the law of precedent and binding effect of the order passed by the higher authority or Tribunal of superior jurisdiction.

# Representation before the Authorities

- ❖ Prepare short notes that would help you while appearing before the adjudicating authority/ appellate authority.
- ❖ Explain the entire case to the Authority and your submissions in respect of the same.
- ❖ Do not rush to the conclusion.
- ❖ Prepare a synopsis of your appeal which should be crisp and short. These synopses are particularly more helpful during e-appeal.

# Representation before the Authorities

- ❖ Speak slowly and softly but firmly.
- ❖ Should be very careful in voice modulations.
- ❖ Stress more on the points that are directly in your favour.
- ❖ A compilation of statutory provisions, circulars and case laws which you wish to rely upon with proper indexation should be handed over.

# Appeal vs Revision

- ❖ Section 108 of the Act gives the power to the revisional authority to revise any order passed by a subordinate authority.
- ❖ In the said revision, authority may enhance or modify or annul the previous order.
- ❖ Order passed by the revisional authority is the final order against which Appeal can be filed to higher courts.



# Appellate Tribunal under GST

- ❖ Type of GSTAT
  - ❖ National Bench also known as Regional Bench situated at New Delhi.
  - ❖ State Bench also known as Area Bench situated in various states.
- ❖ Regional Benches will hear the cases where one of the issue is related to place of supply.
- ❖ State Benches will hear appeals in cases involving matters other than determination of place of supply

# Appellate Tribunal under GST

- ❖ Appeal against the order passed by the National Bench shall lie before the Supreme Court.
- ❖ Appeal against the order passed by the State Benches shall lie before the High Court.
- ❖ Fees for filing an Appeal before the Tribunal is Rs. 2,000/- for every Rs. 1,00,000 of demand which shall not exceed Rs. 50,000/- in any case.
- ❖ Every appeal needs to be heard and decided within one year, to the extent possible.

# Appellate Tribunal under GST

- ❖ Pre-deposit shall be 20% of the disputed demand which shall not exceed Rs. 100 crores (CGST+SGST)
- ❖ In service tax, CESTAT had the power to condone the delay for the unlimited period. However, GSTAT cannot condone the delay for a period more than 3 months.
- ❖ GSTAT at its own discretion may refuse to admit the appeal where the demand amount is less than Rs. 50,000/-
- ❖ Appeal with GSTAT can also be filed against the order of revisional authority.

# Memorandum of cross objection (MOCO)

- ❖ Party against whom an appeal is filed may file MOCO u/s 112(5) of CGST Act.
- ❖ In State of Tamil Nadu vs. TVL Jevan Lal Ltd. reported as 1997(91) E.L.T. 268(S.C.)-Hon'ble Supreme Court has, inter alia, held that if one party files appeal against part of the order which is against him, other party can file cross objections in respect of part of order which is against him, as the entire order comes within the purview of Appellate Authority.
- ❖ In CCE vs. Godrej & Boyce Mfg. Co. Ltd. reported as (2009) 233 E.L.T. 446 (Bom. HC DB), it was inter alia held that even if appeal was not filed, cross objection can be filed. Cross objection is treatable as appeal against that part of order only against which no appeal has been preferred.

# Memorandum of cross objection (MOCO)

- ❖ MOCO should be filed within 45 days of receiving the notice that appeal has been filed.
- ❖ GSTAT can condone the delay for a maximum period up to 45 days on the sufficient cause.

# Departmental Appeal

- ❖ Department can also file an appeal against an order.
- ❖ Department can file an appeal to the Appellate Authority within 6 + 1 months from the date of communication.
- ❖ Department can also file an appeal to GSTAT within 6+ 3 months from date of communication.

# Exercise of Writ Jurisdiction

- ❖ Writs can be filed to High Court as per Article 226 of the Constitution of India.
- ❖ A writ can be filed:
  - ❖ When the vires of the act is required to be challenged.
  - ❖ When there is a violation of principle of natural justice.
  - ❖ Where the alternative remedy is onerous or burdensome or inadequate
  - ❖ The order or proceedings are wholly without jurisdiction;
- ❖ A writ petition cannot be filed in case where alternatively suitable equally efficacious remedy is available to the party.

# Exercise of Writ remedies

- ❖ *Oryx Fisheries Pvt. Ltd. v. Union of India – 2011 (266) E.L.T. 422 (S.C.)*  
If on a reasonable reading of a show-cause notice a person of ordinary prudence gets the feeling that his reply to the show cause notice will be an empty ceremony and he will merely knock his head against the impenetrable wall of prejudged opinion, such a show cause notice does not commence a fair procedure especially when it is issued in a quasi-judicial proceeding under a statutory regulation which promises to give the person proceeded against a reasonable opportunity of defense.
- ❖ The latest judgment of the Hon'ble Supreme Court in the case of *M/s Radha Krishan Industries 2021 (4) TMI 837 - SUPREME COURT* can also be referred in this regard.



# Appeal vs Rectification

- ❖ Any person aggrieved by any order issued by the adjudicating authority or appellate authority under the provisions of the Act may prefer an Appeal before the relevant appellate forum.
- ❖ Scope of Rectification u/s 161 is confined to mistakes apparent on the face of record for which no further examination is required.
- ❖ The aggrieved person cannot re-argue the case on merits by filing rectification application before the same authority.
- ❖ Rectification is filed before the same authority whereas Appeal is filed before the superior authority.
- ❖ One should file both ROM and appeal so that appeal does not become time-barred. Scope of appeal against order of ROM is very limited

# Doctrine of Merger

- ❖ In *M/s. Goier Brothers Pvt. Ltd. v. Shri Ratanlal - AIR 1974 SC 1380* Hon'ble Supreme Court held that the order passed by the lower authority shall merge in the order passed by the appellate authority whatsoever be its decision - whether of reversal or modification or only confirmation.
- ❖ “To merge” means to sink or disappear in something else; to become absorbed or extinguished; to be combined or be swallowed up. Merger in law is defined as the absorption of a thing of lesser importance by a greater, whereby the lesser ceases to exist, but the greater is not increased; an absorption or swallowing up so as to involve a loss of identity and individuality.

# Doctrine of Merger

- ❖ The Doctrine of Merger can be better understood from the following observations of the Supreme Court in a landmark decision in the case *Kunhayammed v. State of Kerala (2000) 113 Taxman 470 (SC)*:
  - ❖ Where an appeal or revision is provided before a superior forum against an order passed by a Court, Tribunal or any other authority and such superior forum modifies, reverses or affirms the decision put in issue before it, the decision by the subordinate forum merges with the decision by the superior forum and it is the latter which subsists, remains operative and is capable of enforcement in the eye of law.
  - ❖ The doctrine of merger is not a doctrine of universal or unlimited application. It will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge.

# Various Forms

Various Forms for Appeals under GST	
Form No.	Particulars
<b>GST APL-01</b>	Form of appeal to the Appellate Authority filed by aggrieved person, under section 107(1) of the Act
<b>GST APL-02</b>	Final acknowledgement, indicating appeal number issued by the Appellate Authority or an officer authorized by him or the Registrar
<b>GST APL-03</b>	Application to the Appellate Authority filed by the Commissioner, for examination of records of any proceedings, under section 107(2) of the Act
<b>GST RVN-01</b>	Notice under Section 108 to the person in case of Revision
<b>GST APL-04</b>	Summary of the demand after issue of order by the appellate authority, Revisional authority, tribunal or court
<b>GST APL-05</b>	Form of appeal to the Appellate Tribunal filed by aggrieved person, under section 112(1) of the Act
<b>GST APL-06</b>	Form of Memorandum of cross-objections to the Appellate Tribunal
<b>GST APL-07</b>	Application to the Appellate Tribunal filed by the Commissioner, for examination of records of any Order, under section 112(3) of the Act
<b>GST APL-08</b>	Form of appeal to the High Court containing grounds of appeal and the form of verification



*Thank You*