

## **GST First Appeal – Practical Insights**

This article helps you to file the appeal with the Commissioner (Appeals), i.e. the Appellate Authority. Against the order passed in Form DRC-07, if unsatisfied, an appeal has to be filed with the appellate authority, which is called the First Appeal.

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Section 107 of the GST Act, 2017 prescribes that against any order passed by the adjudicating authority, a first appeal can be filed with the Commissioner (Appeals). It has to be filed within a period of **three months** from the date of communication of the order, and in case of delay, it can be filed with **one month condonation**. This means the appeal can be filed within **3 + 1 months**.

For computation of the three-month period, the time limit starts when the order is served upon the taxpayer in any of the prescribed modes under Section 169 of the CGST Act, 2017.

For filing of appeal, a **mandatory pre-deposit of 10% of the disputed amount and 100% of the admitted amount** is required to be paid. The pre-deposit is calculated and paid **head-wise**.

Appeals are mandatorily required to be filed electronically on the GST portal. To file the appeal, the taxpayer has to submit an appeal paper book containing the **facts of appeal** and **grounds of appeal**. Some tips based on experience are as below:

### **a. Elaborate Facts of Appeal clearly**

It contains why we are appealing against the order. It includes discussion on every point against which the appeal is being filed. For example, if in the adjudication order demand has been created on four points—such as GSTR-2A vs GSTR-3B mismatch, ineligible ITC, taxes short paid as per GSTR-1, and short reversal of ITC—each of these points and the reason for appeal must be discussed (in brief).

### **b. Grounds of Appeal**

It contains the legal grounds with evidentiary support and case laws to defend the case.

### **Electronic Appeal**

The appeal is mandatorily required to be filed electronically. Appeal documents must contain the grounds of appeal and facts of appeal along with necessary supporting annexures and enclosures. There is one annexure available on the GST portal under the appeal section which is required to be filled and filed in PDF form along with the appeal form.

If the appeal is filed with delay, it must contain the **condonation application** so that the delay can be condoned and the appeal can be heard on merits.

If the appeal is against a manual order (which is not in trend nowadays), a certified copy of the order must be filed electronically on the portal. There is no requirement of manual submission; however, in some States, the SGST department requires manual submission for fixing of hearings. It is advisable to submit the complete filed set manually with the concerned CGST or SGST department so that the hearing can be fixed.

### **Adjournment with sufficient reason**

Hearing of appeal can be adjourned a maximum of **three times**, subject to proper reason and satisfaction of the proper officer. If any notice contains three different dates for hearing, it is counted as **one hearing**, as adjournment is only upon request of either party and must have sufficient cause.

### **Personal Hearing Mandatory**

Personal hearing is the taxpayer's statutory right. No appeal should remain unheard unless the right is waived by the taxpayer by giving the same in writing to the department, requesting the case to be decided on merits based on submissions made. If any appeal is decided without hearing the taxpayer, the order can be challenged in higher forums on this ground as well. Opportunity of being heard is guaranteed by the Constitution and must be adhered to by officers.

### **Order Pronouncement**

The order must be pronounced within **one year** from the date of filing of appeal; however, the same can be delayed if there is sufficient reason. Nevertheless, there is a disturbing trend in India where appeals remain pending for long periods, much beyond one year, primarily due to vacancies in appellate jurisdictions.

### **Notice Served – Additional Notices and Orders (Case Laws)**

It is very important that an order in Form DRC-07 is served upon the taxpayer through a proper and valid mode of service. It has been observed in the past that show cause notices and orders have been uploaded by the Department under the tab "**Additional Notices and Orders**" on the GST portal and remain unaddressed by the taxpayer, whereas such notices and orders are required to be uploaded under the tab "**Notices and Orders**."

Due to such incorrect uploading, the taxpayer does not become aware of the notice or order. In appeal matters, the limitation period starts from the date of service of the order. Although uploading on the GST portal is one of the prescribed modes of service, where such uploading remains unnoticed due to incorrect tab placement, limitation should be reckoned from the date on which the taxpayer became aware of the order.

Various courts have held that notices and orders uploaded under the tab "Additional Notices and Orders" cannot be treated as valid service. Courts have also observed that uploading must be done in the correct and designated tab. Further, where the taxpayer does not respond, the Department is required to communicate the same through other prescribed modes such as post, email, or personal delivery.

### **Additional Submission**

The taxpayer has the right to amend original submissions and make additional submissions, provided a prayer is made at the time of filing the appeal itself. If the taxpayer wishes to add or amend anything during personal hearing, a request can be made to the appellate authority and the same can be produced at the next hearing.

### **Rebuttal**

The taxpayer has the right to file a rebuttal against evidences or reports submitted by the department. For example, if the ward submits a report against the taxpayer's appeal, the taxpayer has the right to rebut the same. In many cases, notices and demands are issued based on intelligence or anti-evasion reports, and rebuttal becomes critical to defend the case.

### **Departmental Appeal**

For reasons best known to the government, the GST department has double the time available to taxpayers to file the first appeal, i.e. **six months**, with an additional one month in case of delay. Therefore, taxpayers should not be surprised if intimation is received in the fifth month that an appeal has been filed by the department against an order passed in their favour.

### **Authorised Representative**

Section 109 of the CGST Act, 2017 mandates that only the following persons can be authorised representatives:

CA / CS / CMA, Advocate, relative or employee of the taxpayer, GST Practitioner, retired GST / Central Excise / Customs Officer (minimum Group-B Gazetted Officer with at least two years' experience).

### **Who cannot be Authorised Representative**

Persons dismissed or removed from government service, insolvents, persons convicted of an offence involving moral turpitude, and normal graduates without the above qualifications cannot become authorised representatives.

### **Non-Appealable Order**

The following orders are not challengeable in appeal:

- a. Orders transferring proceedings from one officer to another
- b. Orders relating to seizure or retention of books of accounts, documents, or registers
- c. Decisions granting or refusing authorisation under the Act
- d. Orders allowing or rejecting payment of tax, interest, or penalty in instalments
- e. Orders sanctioning prosecution or refusing to sanction prosecution

However, representation before the tax department and writ jurisdiction can be invoked against the same.

### **Manual Submission**

Manual submission of appeal documents is not required. However, as per practical experience, it is advisable to file two sets with the appeal office for grant of hearing. Manual submission is effective in face-to-face hearings.

### **Virtual Hearings**

CGST and many SGST offices in India have mandated virtual hearings for GST proceedings such as adjudication, assessment, appeals, refunds, etc. If virtual hearing is desired, a request should be made to the appeal office at the time of filing the appeal itself.

### **Submission of case laws, evidences, supporting documents**

It is advisable to file case laws, evidences, and supporting documents at the time of filing the appeal itself. If documents are bulky and exceed size limits, mention them in the appeal paper book and submit them manually to the appeal office.

### **Automatic Stay**

Once the appeal is filed, the order gets automatically stayed and the department cannot proceed with recovery. If the GSTIN is suspended due to non-payment of demand or any other reason, filing of appeal obligates the department to revoke the suspension. However, revocation is not automatic and requires filing of reply and follow-up.

### **Speaking Order**

The appeal order must be a speaking order and must discuss every aspect—SCN, DRC-07, taxpayer submissions, records of personal hearing, departmental submissions, findings, and judgment. GST law mandates that nothing should be left out so that the order withstands judicial scrutiny.

### **Pre-Deposit**

No appeal can be filed without mandatory pre-deposit, and the GST portal does not allow filing without it.

**Pre-deposit requirements:**

<b>Nature of Order (DRC-07)</b>	<b>Components in Order</b>	<b>Pre-deposit Required</b>	<b>Remarks</b>
1	Tax + Penalty + Interest	Against tax component only	No pre-deposit for interest or penalty
2	Tax + Interest	Against tax component only	Interest does not attract pre-deposit
3	Penalty only	Against penalty component only	Penalty is sole subject matter
4	Penalty + Interest (no tax)	Against penalty component only	No pre-deposit for interest
5	Interest only	No pre-deposit required	Interest never attracts pre-deposit

**No Remand Back**

The Appellate Authority cannot remand the matter back for fresh adjudication. This is barred under Section 107(11) of the CGST Act, 2017. Any order directing remand is invalid in law and can be challenged on that ground itself. The authority must decide the case on merits.

**Condonation**

Condonation application must be filed along with the appeal if there is delay. Only one-month condonation is prescribed; beyond **three plus one month**, the appeal is time-barred. The Limitation Act does not apply where time limits are prescribed under the statute itself. Courts have consistently upheld this position.

**Practical Tips**

1. Do not file appeals casually; file them with full preparation.
2. Do not leave any ground in the first submission; additional submissions can be made later if required.
3. Language of the appeal paper book must be clear and understandable.
4. Indexing, page numbering, tagging, and sequencing is key to proper documentation.
5. Always file supported case laws downloaded from reliable resources. Do not rely on AI-generated case laws.
6. Use AI only for formatting and grammar correction, not for content creation.
7. File authorisation letter along with appeal and carry it during hearing.
8. Keep documents handy for effective discussion during hearing.
9. Always be punctual in hearings; punctuality is key to success.