

## Time Limit to file Appeal in GST Appellate Tribunal

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**THE** Central Goods and Services Tax, 2017 (CGST Act) and the respective State Goods and Services Tax [Acts, 2017](#) (SGST Act) have laid down the procedure for filing appeal against the orders passed by the adjudicating authorities and the appellate authorities.

### **Appeal before Appellate Authority**

Any order passed by the adjudicating authority is appealable before the Appellate Authority within three months from the date of communication of the order by following the procedure prescribed in Section 107 of the CGST [Act, 2017](#). As per Section 107, appeal against such orders should be filed with three months from the date of receipt of order. Further, the Appellate Authority has the power to condone the delay up to one month in deserving cases.

### **Appeal before GST Appellate Tribunal**

Any order passed by the Appellate Authority is appealable before the Goods and Services Tax Tribunal (GSTAT) as per Section 112 of CGST [Act, 2017](#). As per Section 112 of the CGST Act, any person aggrieved by the order passed by the Appellate Authority or Revisional Authority shall file an appeal before the Appellate Tribunal within 3 months from the date of communication of the order and in case of appeals by the department, the time limit is six months from the date of communication of the order.

### **Delay in Constitution of GST Appellate Tribunal**

However, there has been a delay in constitution of GSTAT, as the relevant provisions in this regard have been struck down as being unconstitutional by the Hon'ble Madras High Court in case of *Revenue Bar Association Vs Union of India* [2019-TIOL-2188-HC-MAD-GST](#) & [2020-TIOL-1391-HC-MAD-GST](#). The Hon'ble Madras High Court has decided three prime issues in the said case;

(i) Whether the exclusion of advocates from being considered for appointment as judicial member in GST Appellate Tribunal is violative of Article 14 of the Constitution of India.

(ii) Whether Section 110 (b)(iii), which make a member of the Indian Legal Service, eligible to be appointed as a judicial member of the appellate Tribunal, Contrary to the law laid down by the Hon'ble Supreme Court in *Union of India Vs. R. Gandhi reported in* = [2010-TIOL-39-SC-MISC](#).

(iii) Whether the composition of the National Bench, Regional Benches, State Bench and Area Benches of the GST Appellate Tribunal, which consists of one judicial member, one technical member (Centre) and one Technical Member (state), by which the administrative members outnumber the judicial member is violative of Article 14 and 50 of the Constitution of India and the judgment of the Hon'ble Supreme Court of India.

The Hon'ble High vide its judgment dated 20.09.2019 has decided the above-mentioned issues as follows;

(i) It was held that Section 110(1) of CGST [Act, 2017](#) cannot be struck down for reasons of non-inclusion of advocate with 10 years of practise in taxation to be eligible for appointed as judicial members. However, by considering the existing practise and expertise brought in by an advocate having 10 years' experience in taxation, the Hon'ble High Court has advised the Central Government to reconsider the issue regarding eligibility of advocates with 10 years of practise in taxation to be appointed as judicial members in appellate tribunal.

(ii) With regard to the second issue, it was held that, as the rule laid by the Hon'ble Supreme Court in the case of *Union of India Vs R. Gandhi Reported in =* [2010-TIOL-39-SC-MISC](#), a member of Indian Legal Service cannot be appointed as Judicial members in the Appellate Tribunal Constituted under CGST [Act, 2017](#).

(iii) With regard to the third issue, it was held that the number of expert members cannot exceed the number of judicial members of the bench. Therefore, Section 109(3) & (9) have been struck down.

In view of the above Judgment by the Hon'ble Madras High Court, there has been delay in the constitution of GSTAT by the Government.

### **Time limit for filing appeal before the GST Appellate Tribunal.**

Due to the delay in constitution of the Appellate Tribunal, appeals could not be filed within the time limit prescribed under Section 112 of the CGST Act. Thus, vide Removal of Difficulty Order No. [09/2019-Central Tax](#) dated 03.12.2019 it has been provided that the time limit of three months (for assessee appeals) or six months (for departmental appeals), shall be reckoned from the following dates, whichever is later.

(i) Date of communication of order; or

(ii) The date on which President or the State President as the case may be of the Appellate Tribunal after its constitution under Section 109, enters office.

This was further clarified vide Circular No. [132/2/2020-GST](#) dated 18th March 2020.

As per the above clarification issued by the Central Government the three months' time limit for filing appeal against the orders passed by the Appellate Authority or Revisional Authority shall commence from the date on which President of the GSTAT or the President of the State Bench of the Appellate Tribunal enters office, after it has been constituted as per Section 109 of CGST [Act, 2017](#).

### **Recent developments in constitution of GSTAT**

As a result of the order passed by the Hon'ble Madras High Court, the Central Government vide Finance Act, 2023 has amended the provisions of Section 109 and 110 of CGST [Act, 2017](#) in line with the observations of the Hon'ble Madras High Court.

Based on the discussions during the 50th GST Council Meeting held on 11.07.2023, Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members) Rules, 2023 dated 25.10.2023 was notified. Accordingly, Hon'ble Justice (Retd) Shri. Sanjaya Kumar Mishra has been appointed to the post of president of GSTAT and he is expected to assume office soon. Once he assumes the office, the clock for computation of time limit for filing appeals in the principal bench GSTAT shall start ticking.

It may be noted that as per Section 109(5), if place of supply is one of the issues in dispute, such appeals have to be filed before the principal bench of the GSTAT and for all other issues the appeals have to be filed in the State Benches. The time limit for filing appeals in the State benches shall start running only after the President is appointed for the State benches of the GSTAT.

**[The views expressed are strictly personal.]**

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