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L&S Update

an e-update to clients from
Lakshmikumaran & **Sridharan**

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Model GST Law – Appeals and Revision

Appeals and Revision

Overview

- The Draft GST Law provides for the following hierarchy for appeals:

  1. Appeal to First Appellate Authority
  2. Revision by Commissioner (applicable to SGST)
  3. Appeal to Appellate Tribunal
  4. Appeal to High Court
  5. Appeal to Supreme Court

- Provisions regarding constitution of Appellate Tribunal are identically worded both for CGST and SGST. The Model GST Law provides for constitution of a National Goods and Service Tax Appellate Tribunal (NGSTAT) headed by National President. NGSTAT shall have one branch in each State called State GST Tribunal (SGSTAT) headed by a State President. The Tribunal will consist of as many Members (Judicial), Members (Technical - CGST) and Members (Technical - SGST) as may be prescribed. Though the provisions are identically worded for both CGST and SGST, we may need to await the Rules before it can be said whether there will be a common Appellate Tribunal between CGST and SGST.

- There will be differences in the appellate mechanism available to the Tax Administration between CGST and SGST. While the Model GST Law specifically empowers the department to file appeals before the First Appellate Authority and the Appellate Tribunal in respect of CGST, for SGST it provides for powers to revise adjudication orders.

- However, the provisions regarding appeal to High Court, appeal to Supreme Court are common between CGST and SGST.

- IGST Law does not have separate provisions for appeals. The provisions for CGST shall also apply IGST as well.

- Unlike the present sales tax / VAT Regime which provides for constitution of a special authority called Central Sales Tax Appellate Authority (CSTAA) for resolution of inter-State disputes, the Model GST Law provides that disputes involving two States or the Centre and any State shall directly be taken to Supreme Court from Appellate Tribunal.

- There are mandatory pre-deposit conditions for filing appeal before the First Appellate Authority and the Appellate Tribunal. The presumption appears to be that no separate stay application for stay of recovery would be required once the pre-deposit conditions are met.

- The following persons can appear as 'authorised representative' before the GST Officers, First Appellate Authority and Appellate Tribunal, namely:-

1. Relative or regular employee of Taxpayer

2. Advocate entitled to practice in India

3. Chartered Accountant, Cost Accountant or a Company Secretary holding valid Certificate of Practice

4. Person with qualifications specified by Central Government.

Appeal provisions in respect of CGST

	Who can file appeal	Order appealed against	Time limit to file Appeal	Pre-condition to filing of appeal	Number of adjournments in hearing	Time limit to decide appeal
Appeal to First Appellate Authority	Any person aggrieved. Department on direction of Commissioner	Any decision or order passed by an adjudicating authority	3 months from date of communication of order. Delay of upto 1 month condonable	10% of amount in dispute	Upto 3 adjournments can be granted for hearing the appeal	Appeal may be decided within a period of one year from the date of filing.
Revision by Commissioner	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable	Not Applicable
Appeal to Appellate Tribunal	Any person aggrieved by order passed in First Appeal Department on direction of Committee of Designated Officers	Order passed in First Appeal	Within 3 months of communication of Order. Delay filing allowed on show of sufficient cause	10% of amount in dispute.	Upto 3 adjournments can be granted for hearing the appeal	Appeal may be decided within a period of one year from the date of filing.

Appeal provisions in respect of SGST

	Who can file appeal	Order appealed against	Time limit to file Appeal	Pre-condition to filing of appeal	Number of adjournments in hearing	Time limit to decide appeal
Appeal to First Appellate Authority	Any person aggrieved	Any decision or order passed by an adjudicating authority	3 months from date of communication of order. Delay of upto 1 month condonable	Admitted liability is paid. 10% of amount in dispute Higher pre-deposit upto 50% of disputed amount can be mandated on application by department in cases involving disputed tax liability of Rs. 25 Crore or more	Upto 3 adjournments can be granted for hearing the appeal	Appeal may be decided within a period of one year from the date of filing.

	Who can file appeal	Order appealed against	Time limit to file Appeal	Pre-condition to filing of appeal	Number of adjournments in hearing	Time limit to decide appeal
Appeal to Appellate Tribunal	Any person aggrieved by order passed in First Appeal or Revision	Order passed in First Appeal or Revision Proceedings	Within 3 months of communication of Order. Delay filing allowed on show of sufficient cause	Admitted liability is paid. 10% of amount in dispute. Higher pre-deposit upto 50% of disputed amount can be mandated on application by department in cases involving disputed tax liability of Rs. 25 Crore or more	Upto 3 adjournments can be granted for hearing the appeal	Appeal may be decided within a period of one year from the date of filing. (Recommendatory only)

Revision provisions in respect of SGST

	When initiated	Which Orders	Time limit
Revision by Commissioner	Suo-moto or on basis of information received by Commissioner	Decision or Order passed by any officer subordinate to Commissioner. Only on points not appealed before Appellate Tribunal, High Court or Supreme Court	Later of the following, namely:- 1. 3 years from the date of Order 2. 1 year from the date of order of Appellate Tribunal, High Court or Supreme Court in case sought to be revised is appealed against before such forums.

Appeals to High Court and Supreme Court (common to CGST and SGST)

	Who can file appeal	Order appealed against	Time limit to file Appeal
Appeal to High Court	Commissioner of GST or any other party aggrieved	Order of Appellate Tribunal involving substantial question of law Not appealable – Order of Appellate Tribunal involving dispute between two states, or a state and centre regarding nature of supply or place of supply	Within 180 days of communication to the concerned party Delayed filing allowed on show of sufficient cause

	Who can file appeal	Order appealed against	Time limit to file Appeal
Appeal to Supreme Court	Not specified As per the Supreme Court Rules and Code of Civil Procedure	Order of High Court. Order of Appellate Tribunal involving dispute between two states, or a state and centre regarding nature of supply or place of supply	As per the Supreme Court Rules and Code of Civil Procedure

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