



INTRODUCTION TO APPEALS UNDER GST & FILING OF APPEALS

SAURABH DIXIT, ADVOCATE



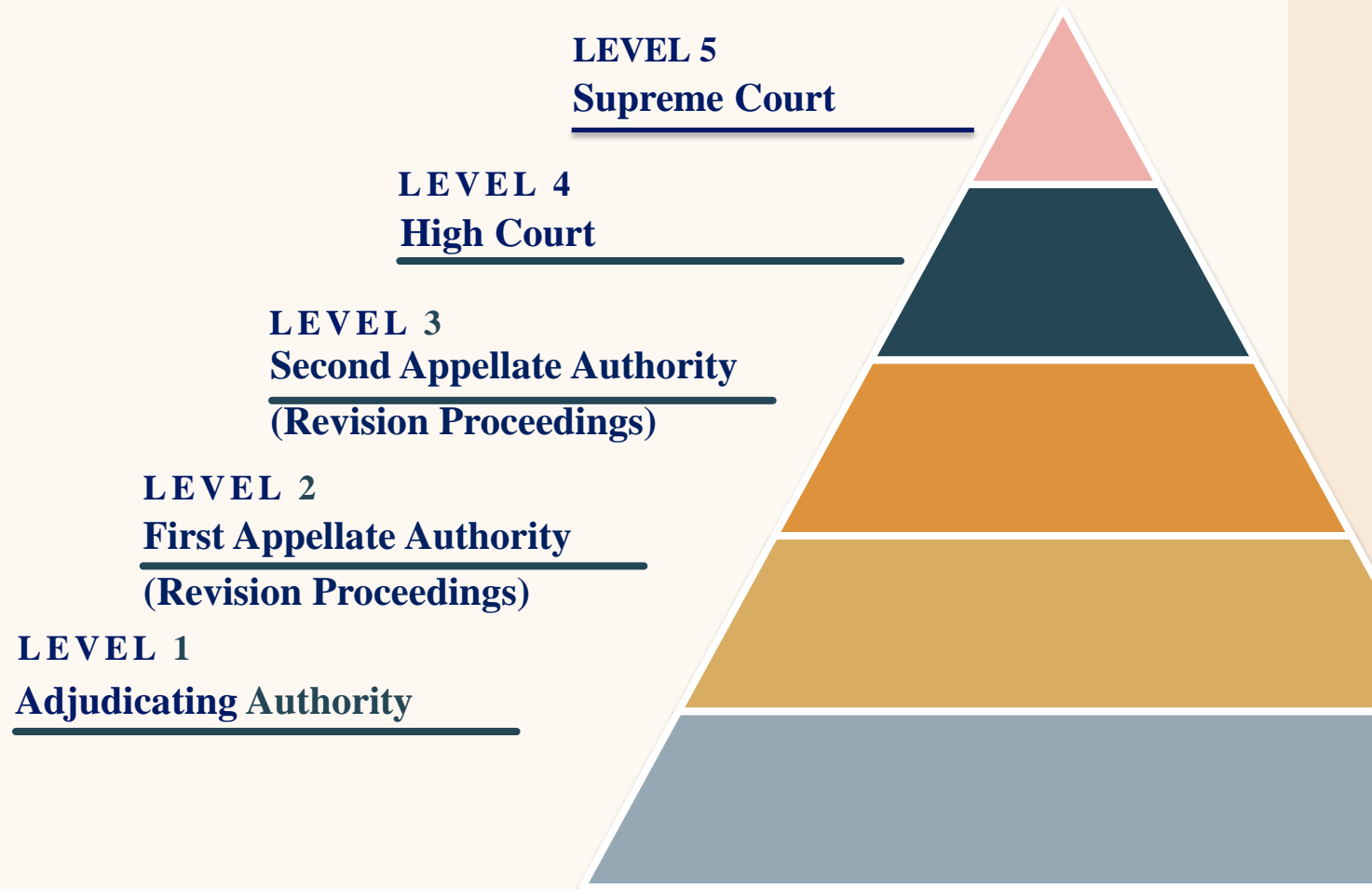
UBI JUS IBI REMEDIUM

(WHERE THERE IS A RIGHT, THERE IS A REMEDY)

- LATIN MAXIM



APPEALS AND REVISION UNDER GST



Mode of Communication – Section 169

SECTION 169 (1) specifies the modes of communication for any decision, order, summons, notice or any other communication:

By giving or tendering it directly or by a messenger including a courier

By registered post or speed post or courier with acknowledgement due

E-mail address

on the common portal

Section 169(3) assumes that the registered post/ speed post/ courier shall reach the intended person within normal time of transit unless otherwise proved – courier tracking



Mode of Communication – Section 169

M/S Baghel Trading Co Versus State Of U.P. AND 2 OTHERS 2023 (10) TMI 104 - ALLAHABAD HIGH COURT Other Citation: 2023 (78) G. S. T. L. 147 (All.) – Section 107 Vis-a Vis Section 169 (Communicated V/S. Served) – Writ disposed as per Noti. 53/23 - CT

M/s. Murugesan Jaylakshmi 2024 (2) TMI 715 Mad HC - Notice/Order uploaded under additional notices – Assessee unaware-fresh opportunity

**OIO must be on GSTN portal, whether manual Appeal can be filed?
M/S. Britannia Industries Limited 2023 (8) TMI 524 - Gujarat High Court**



Goods and Services Tax Appellate Authority (Section -107 & Rule 108)

107(1)

Any Person who is aggrieved by the decision / order of the adjudicating authority

107 (1) & (2)

May Appeal from the date of order communicated - Within 3 months– By Person i.e., Tax Payer

Within 6 months– By Commissioner or any of his Subordinate Officer i.e., Departmental appeal.

107(4)

Appellate Authority may condone delay upto 1 month beyond normal period to file appeal, if there is sufficient cause of delay



Goods and Services Tax Appellate Authority

{Pre-Deposit Section 107(6)}

Superintendent/AC/DC-
Appeal to JC/ADC
JC/ADC – Appeal to
Commissioner(Appeal)

First Appeal can be filed only
when appellant has paid

When the payment of
pre-deposit made-
recovery of remaining
balance deemed to be
stayed.

In full –such amount of
tax, penalty, interest,
fine, fees, penalty from
the impugned order, as
is admitted by him.

Sum = 10% of the remaining
amount of tax in dispute arising
from the impugned order in relation
to which appeal is filed.(Max. – Rs.
25 Cr) - limit to be reduced as per
53rd GST council decision



GST Appellate Authority and Tribunal {Pre-Deposit Section 107(6) & 112(8)}

❑ Whether Pre-deposit can be made through Credit ?

- M/s. Shiv Crackers Vs. Chief Commissioner of CGST and C.E. & ANR-2024(3) TMI 832-Guj
- Issue: Legality of using the Electronic Credit Ledger (ECL) for pre-deposit under Section 107(6) of the CGST Act.
- Held: The amount of ITC available in the ECL can be used towards payment of Integrated Tax or Central Tax or State Tax or Union Territory Tax.
- The GSTN portal permits payment through ITC during course of filing appeal
- What about RCM liability/refund recovery related appeals?
- Contrary judgments by other HC.



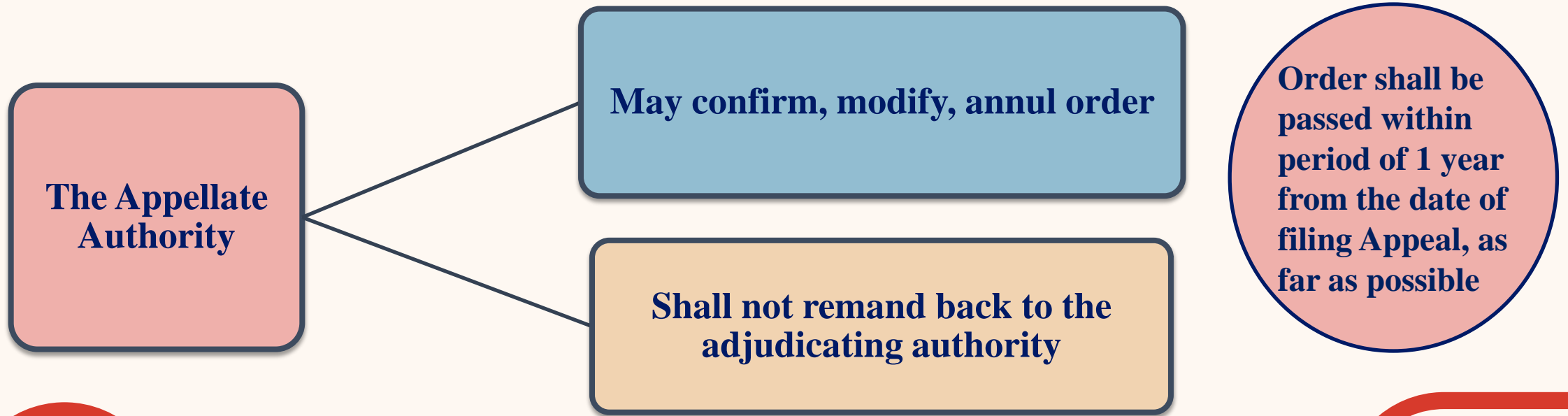
GST Appellate Authority and Tribunal {Pre-Deposit Section 107(6) & 112(8)}

- ❑ **CBIC letter No.240137/14/2022-ST Section-CBIC dt.10.4.23 permits appeal pre-deposit through DRC03.**

- ❑ **Any Deposit of amount under protest considered as a pre-deposit?**
 - Chetankumar Jasraj Palgote HUF 2023(12) TMI 942- Bombay HC.
 - The Court held that the deposit made under protest without a demand can be considered a pre-deposit, as per the decision in Vinod Metal case, ensuring access to justice and not frustrating appeal rights due to procedural formalities.
 - CBIC Circular No. 224/18/2024 -GST Dt.11.7.24- second appeal recovery till tribunal is set up + recognizes pre-deposit paid during investigation through DRC-03.



Goods and Services Tax Appellate Authority



Enhancing any fees, penalty, fine of confiscating goods/ reduce amount of ITC or refund – after given reasonable opportunity of showing cause against proposed order.



(Mode of Filing appeal before Appellate Authority/Tribunal)

- ❖ Appeal shall be filed in Form APL-01/APL-03 either electronically or otherwise as may be notified by the Commissioner, to the first Appellate Authority.
- ❖ Appeal shall be filed in Form APL-05/APL-07 to Appellate Tribunal. Cross objections to be filed in Form APL-06
- ❖ Provisional Acknowledgment shall be issued immediately and the final Acknowledgment shall be issued in Form APL-02. That the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal.
- ❖ Certified copy of order to be submitted within 7 days in case of offline filing. If not submitted within 7 days – date of submission of certified order shall be considered as date of filing of Appeal.
- ❖ The Appeal shall be treated as filed only when the final acknowledgement, indicating the Appeal number is issued.
- ❖ Production of additional evidences before Tribunal.



Revisional Authority (Section -108)

May confirm, modify, annul order passed by lower authority on its own motion or on request from Commissioner of State or Union Territory tax.

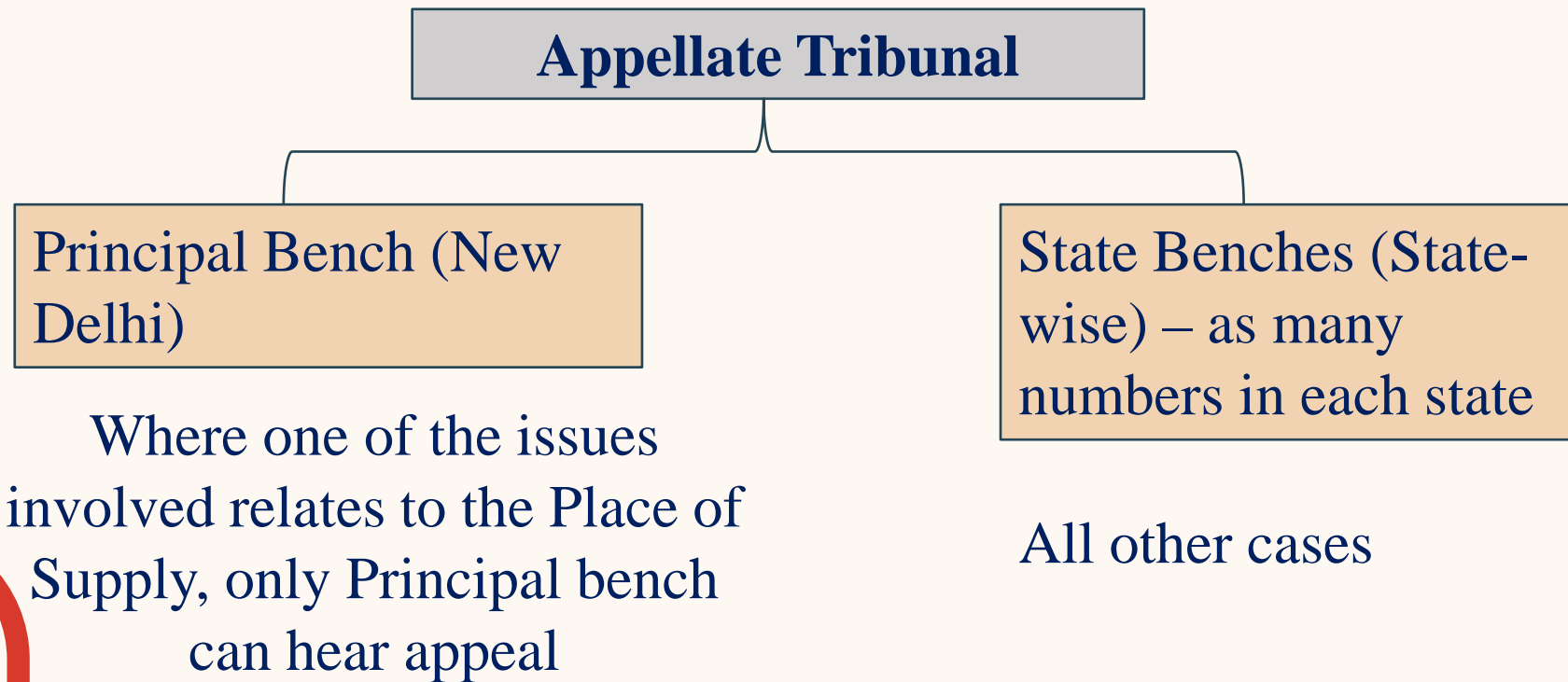
Shall not exercise its power u/s 108(1) if;

- a. Order has been subject to Appeal u/s 107, 112, 117 or 118;
- b. Period specified u/s 107(2) has not yet expired or more than 3 years have expired after passing of the order
- c. The order already taken for revision under this section at an earlier stage
- d. The order has been passed u/s 108(1)

Limitation Period 108(4)
The period spent between the date of decision of the Appellate Tribunal & the date of decision of HC or date of decision of SC shall be excluded from Section 108 2(b)



Goods and Services Tax Appellate Tribunal (Section -109)



Goods and Services Tax Appellate Tribunal (Section -112 & Rule 110)

112(1)

Any Person who is aggrieved by the decision / order of the Appellant authority (Sec.107) or Revisional Authority (Sec.108)

112 (1) , (3) & (5)

**May Appeal from the date of order communicated -
Within 3 months– By Person i.e., Tax Payer
Within 6 months– By Commissioner or any of his Subordinate Officer i.e., Departmental appeal.
Cross objection within 45 days from the receipt of notice of filing appeal.**

112(6)

Appellate Tribunal may give extension beyond normal period to file appeal, if there is sufficient cause of delay



Goods and Services Tax Appellate Tribunal {Pre-Deposit Section 112(8) and fees}

Appeal / ROA fee
Rs.1000/- per Rs.
1,00,000/- of tax /
ITC / fine/ fee/
penalty (max Rs.
25000/-).

Second Appeal can be filed
only when appellant has paid

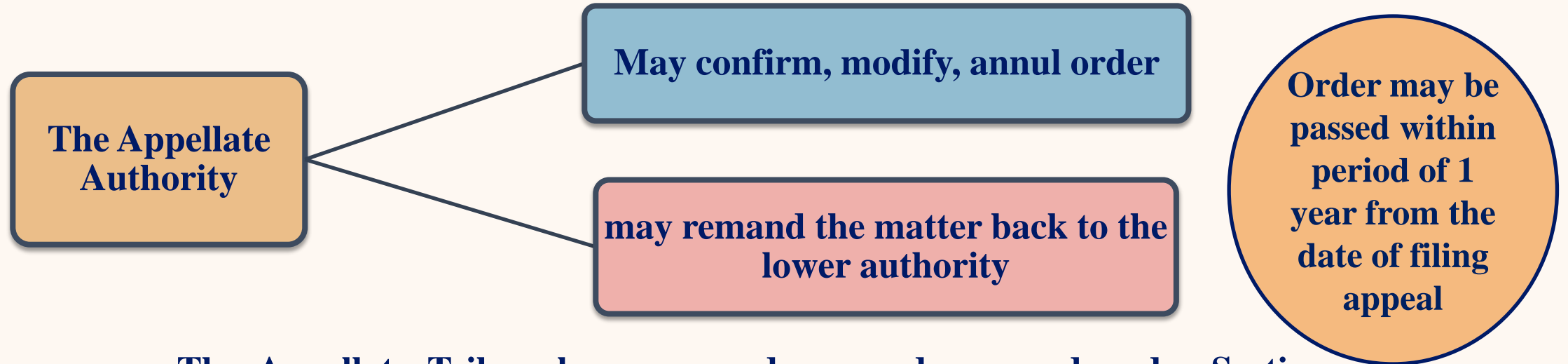
When the payment of
pre-deposit made-
recovery of remaining
balance deemed to be
stayed.

In full –such amount
of tax, penalty,
interest, fine, fees,
penalty from the
impugned order, as is
admitted by him.

Sum = 20% of the remaining amount
of tax in dispute arising from the
impugned order in relation to which
appeal is filed.(Max. – Rs. 50 Cr)-
limit to be reduced as per 53rd GST
council decision

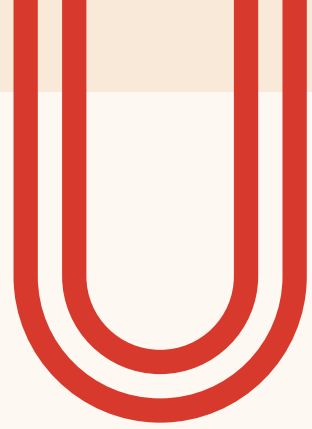


Goods and Services Tax Appellate Tribunal



The Appellate Tribunal may amend any order passed under Section 113(1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner CGST/SGST/UTGST or other party to the appeal within period of 3 months from the date of the order.





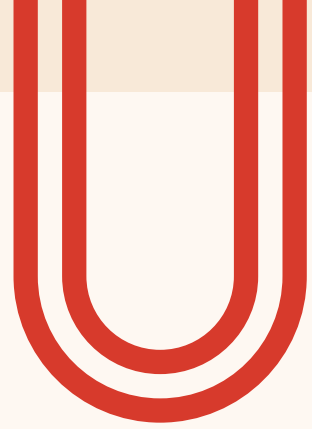
ADJOURNMENT

NUMBER OF ADJOURNMENTS

Appellate Authority
Not more than 3 times

Appellate Tribunal
Not more than 3 times

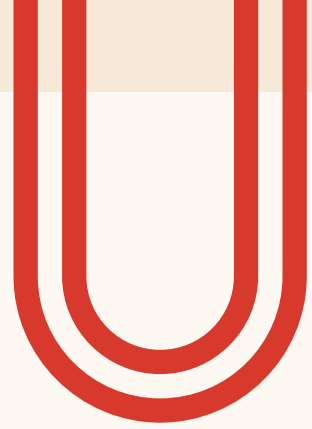




AUTHORISED REPRESENTATIVE UPTO TRIBUNAL

<p>Relative / regular employee</p> <p>Advocate</p> <p>CA/CS/Cost Accountant</p> <p>GST practitioner</p> <p>Retired CBIC/UTGST/SGST officer not below Group-B Gazetted officer for at least 2 years</p>	<p>Disqualification in certain cases</p>
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APPEAL TO HIGH COURT (SECTION 117)

Any Person who is aggrieved by order of any state bench of Tribunal

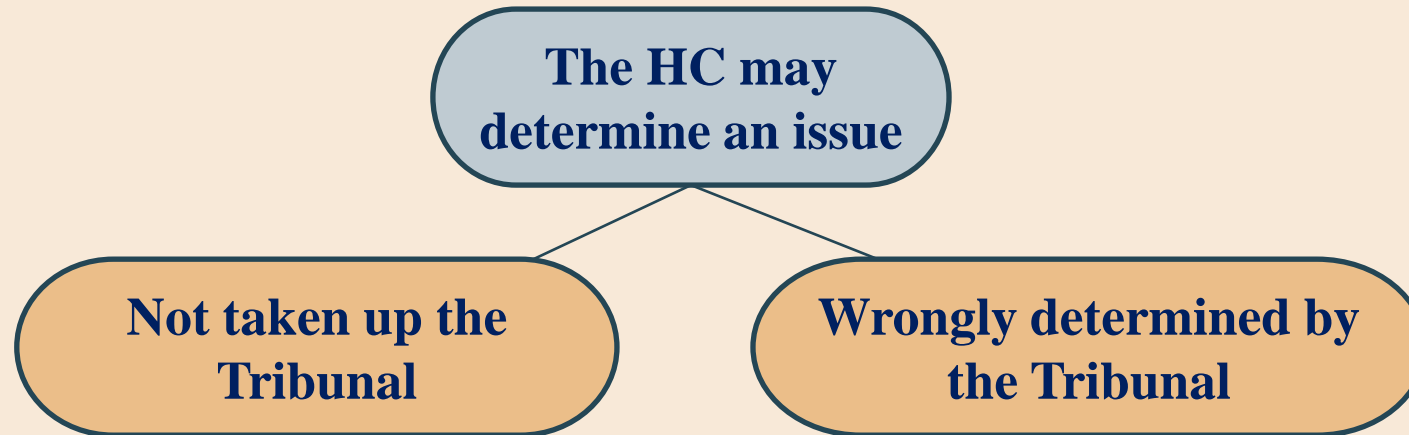
Involves question of law

Appeal shall be filed within a period of 180 days from receipt of order





APPEAL TO HIGH COURT (SECTION 117)

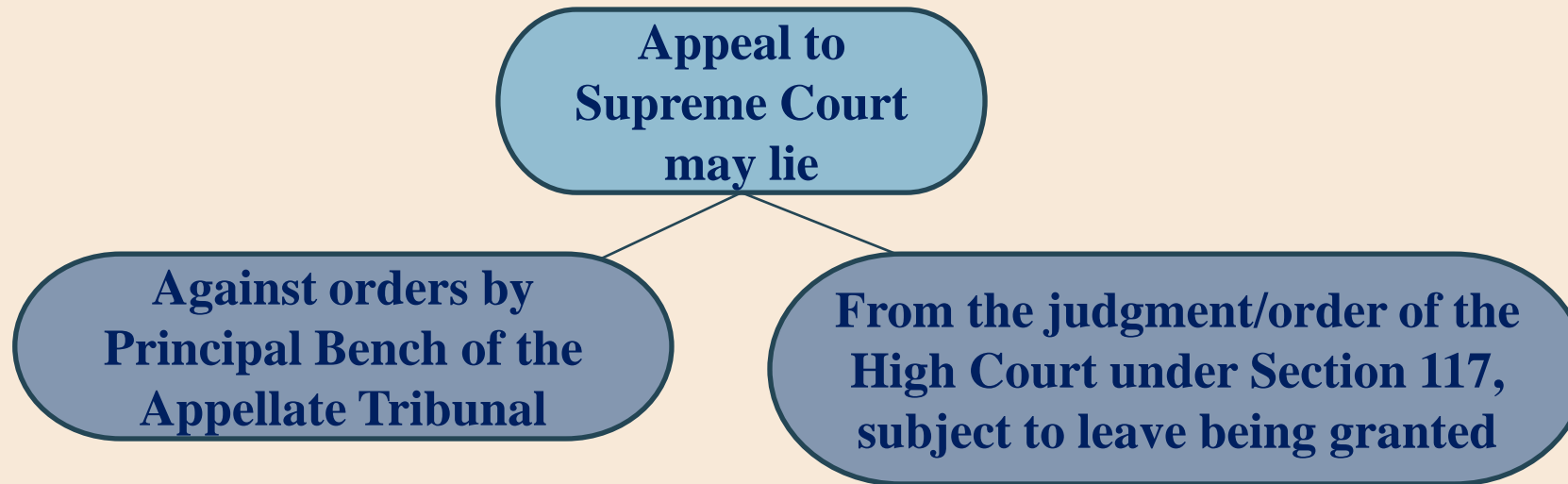


The provisions of CPC, 1908 shall apply for appeals under this section, to the extent required.





APPEAL TO SUPREME COURT (SECTION 118)



The provisions of CPC, 1908 shall apply for appeals under this section, to the extent required.





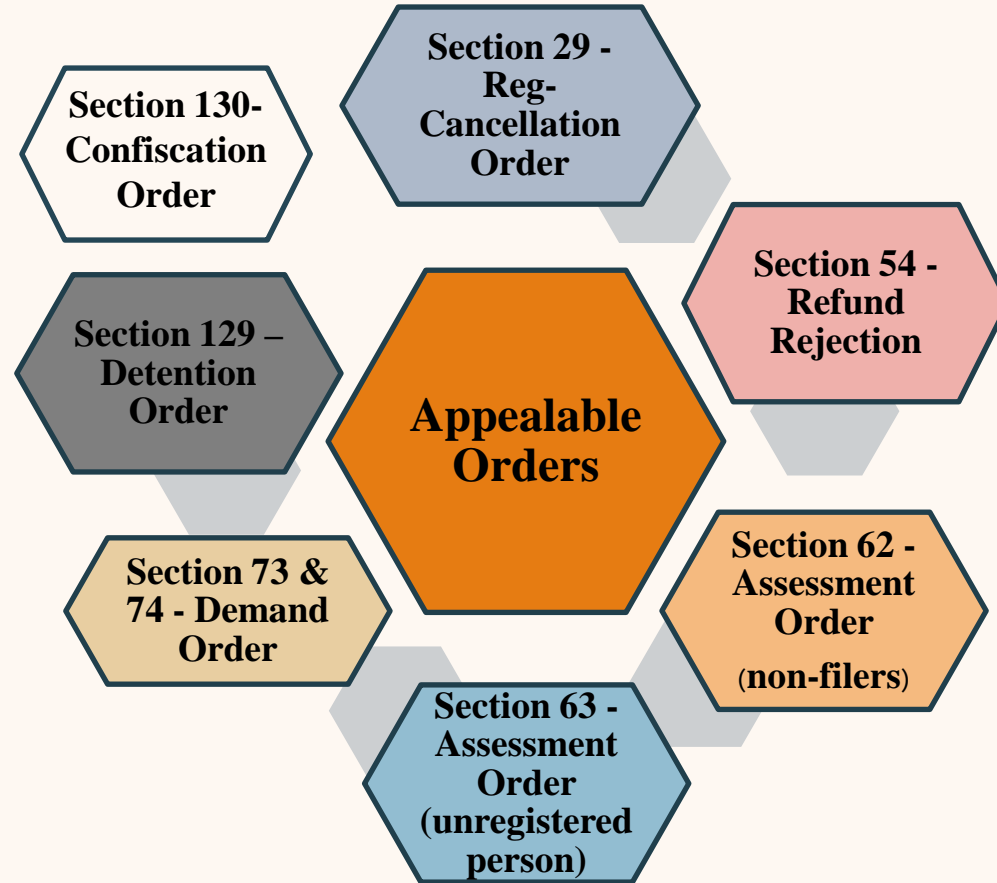
SUMS PAYABLE IRRESPECTIVE OF APPEAL

As per section 119, irrespective of whether or not appeal is filed in HC/SC, sums due to Govt. are payable against any order passed by tribunal or HC (unless stayed)

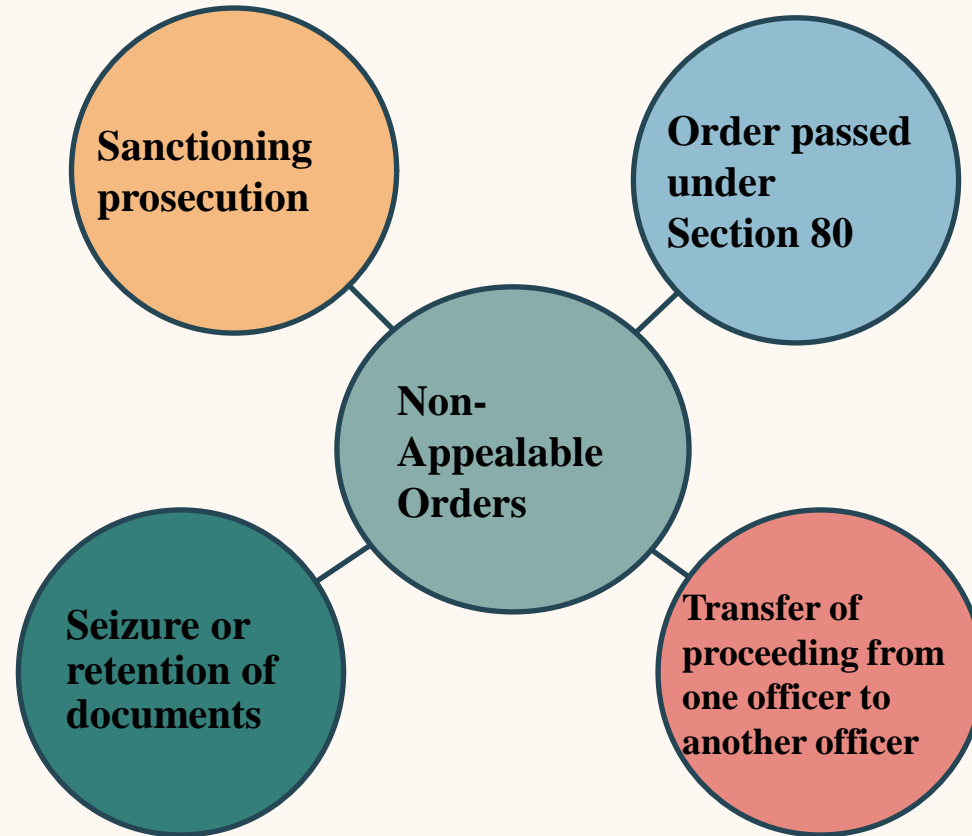
Jurisdiction of Civil Court barred except before HC/SC (Section 162)



APPEALABLE ORDERS



NON - APPEALABLE ORDERS





APPEAL NOT TO BE FILED IN CERTAIN CASES (SECTION 120)

Fixed monetary limits for filing Appeals before GSTAT, High Courts and Supreme Court for revenue appeals: (Ref: CBIC Circular No.207/1/2024-GST dated. 26.06.2024)

GST Appellate
Tribunal

- Rs. 20 Lakhs

High Court

- Rs. 1 Crore

Supreme Court

- Rs. 2 Crore





APPEAL NOT TO BE FILED IN CERTAIN CASES (SECTION 120)

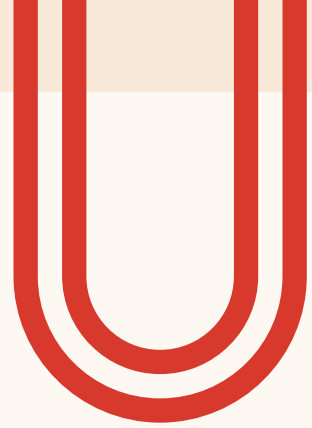
Exclusions

Where any provision of the CGST Act or SGST/UTGST Act or IGST or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India; or

Where any Rules or regulations made under CGST Act or SGST/UTGST Act or IGST or GST (Compensation to States) Act has been held to be ultra vires the parent Act; or

Orders, notifications, circulars, instructions issued by the Government or Board held to be ultra vires to the Act or Rules made thereunder.





APPEAL NOT TO BE FILED IN CERTAIN CASES (SECTION 120)

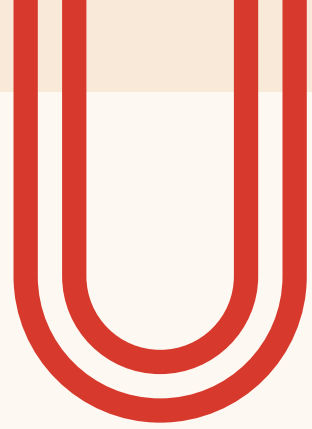
Exclusions

Matters related to: i. Valuation of goods or services; ii. Classification of goods and services; iii. Refunds; iv. Place of supply; v. Any other issues which are recurring in nature and/or involve interpretation of the provision, Rules, notification, Circular, Order, Instruction etc.

Cases where strictures/adverse comments have been passed and/or costs have been imposed against the Government/Department or their officers.

Any other case or class of cases where, in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.





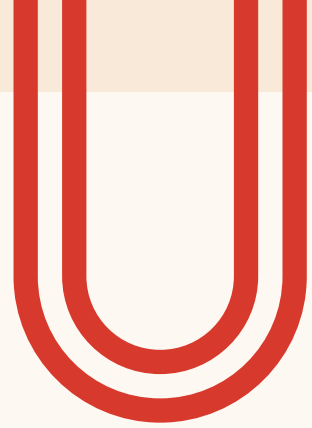
APPEAL NOT TO BE FILED IN CERTAIN CASES (SECTION 120)

ADDITIONAL INSTRUCTIONS

Any appeal not filed as per this instruction shall not have any precedent value. Reviewing Authorities shall specifically record that “even though the decision is not acceptable, appeal is not being filed as the amount involved is less than the monetary limit fixed by the Board.”

Non-filing of appeal in one case by the Department due to monetary limit shall not prohibit officers from filing appeal in another case with the same issue where the Tax in dispute exceeds the monetary limit.





APPEAL NOT TO BE FILED IN CERTAIN CASES (SECTION 120)

ADDITIONAL INSTRUCTIONS

There shall be no presumption that when the Department does not file an appeal due to monetary grounds, the Department has accepted the decision on the disputed issue. Authorities must verify whether the decision is accepted on merit or due to monetary grounds by the Department when any order is cited or relied upon by taxpayers.

Department representatives/counsels must make efforts to bring to the notice of the GSTAT or the Court that an appeal was not filed based on the monetary limit.



THANK YOU

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