



GST Appeal Essentials

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Day 32- RUN @ 75

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Thank You!

- EIRC ICAI
- Sanjib Bhaiya
- Participants
- Coordinator for today- CA Komal Agarwal

Topics to be covered

- Non-Appealable order
- Action Points against any order
- Scheme of the Act
- Pre deposit and Interest on refund of Pre dep
- Procedures of Appeal Filing
- Powers of AA and Time Limits
- Document Checklist & FAQ
- Practical Issues
- Best Practices
- 53rd GSTCM recommendations

ARE ALL ORDERS APPEALABLE?



Non-Appealable orders [Sec 121]

- an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
- 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*).

Action points against any order/decision?

- **Appeal [Sec 107(1)]**- Appeals can be made to clarify and interpret the law. Appeals can involve rehearing on questions of law as well as on facts of the case.
- **Review Appeal [Sec 107(2)]**- Commissioner's authority to review and challenge decisions (on the grounds of the legality or propriety of order) of the adjudicating authorities within six months.

Action points against any order/decision?

- **Revision (Section 108)**- Revision involves a superior authority examining the legality of an order by a subordinate authority. Revisions can be made when the order is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts.
- **Rectification (Section 161)**- Order passed by the same authority passing the order to rectify any mistake or error which is apparent from the records.

Appeal Under GST- Scheme of the Act



Section 107- 1st
Appellate Authority



Section 108-
Revisional Authority



Section 109-115-
GSTAT



Section 116, 119-121-
Miscellaneous



Section 117- Appeal
to HC



Section 118- Appeal
to SC



Chapter XIII -Rule
108-116

APPEAL TO APPELLATE AUTHORITY

[SECTION - 107]

Appeal Under GST- Scheme of the Act

Sec 107- Any person aggrieved by any decision or order passed under this Act or the S/UGST by an adjudicating authority may appeal to such Appellate Authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

Appeal Under GST- Scheme of the Act

- “person” has been defined inclusively u/s 2(84) of the CGST Act, 2017
- “Aggrieved” has not been defined in the Act.
 - *Aggrieved party means the persons whose rights are adversely affected by a judgement, decree or order (Advanced Law Lexicon)*
- “any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority”
 - *“any decision or order” – terms of wide amplitude.*

Appeal Under GST

- **Dee Vee Projects Ltd. Versus The Government Of Maharashtra [2022 (2) TMI 569 - Bombay High Court]**
 - *Reading the provision, we can see that appeal under section 107(1) can be filed against a decision or order passed under Central GST Act or State GST Act or the Union Territory GST Act by an adjudicating authority.*
 - *It is also clear that this provision does not include any decision or order passed under the Rules framed under Central GST Act or any other Rules. In this case, the respondents maintain that the impugned order and action has been passed and taken under rule 86-A of the Rules, 2017.*
 - *Therefore, we find that no appeal remedy could have been available to the petitioner under this provision.*

Order cannot traverse beyond SCN

- **Sec 75(7)**

- *The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and*
- *No demand shall be confirmed on the grounds other than the grounds specified in the notice*

Eg: Order u/s 73 was passed for all three heads (3B vs 2A diff FY 2020-21) but the SCN is only for Two heads (CGST and SGST). Is this ground sustainable ?

Adjudicating Authority [Sec 2(4)]

- “Adjudicating Authority” means any authority, appointed or authorized to pass any order or decision under this Act, but does not include the -
 - › Central Board of Indirect Taxes and Customs,
 - › the Revisional Authority,
 - › the Authority for Advance Ruling,
 - › the Appellate Authority for Advance Ruling,
 - › the National Appellate Authority for Advance Ruling,
 - › the Appellate Authority,
 - › the Appellate Tribunal and
 - › the Authority referred to in sub-section (2) of section 171

Procedures of Appeal Filing



As per section 107(1) an appeal should be filed electronically along with the relevant documents in **FORM GST APL-01**.



The department then acknowledges the appeal by issuing **FORM GST APL-02**.

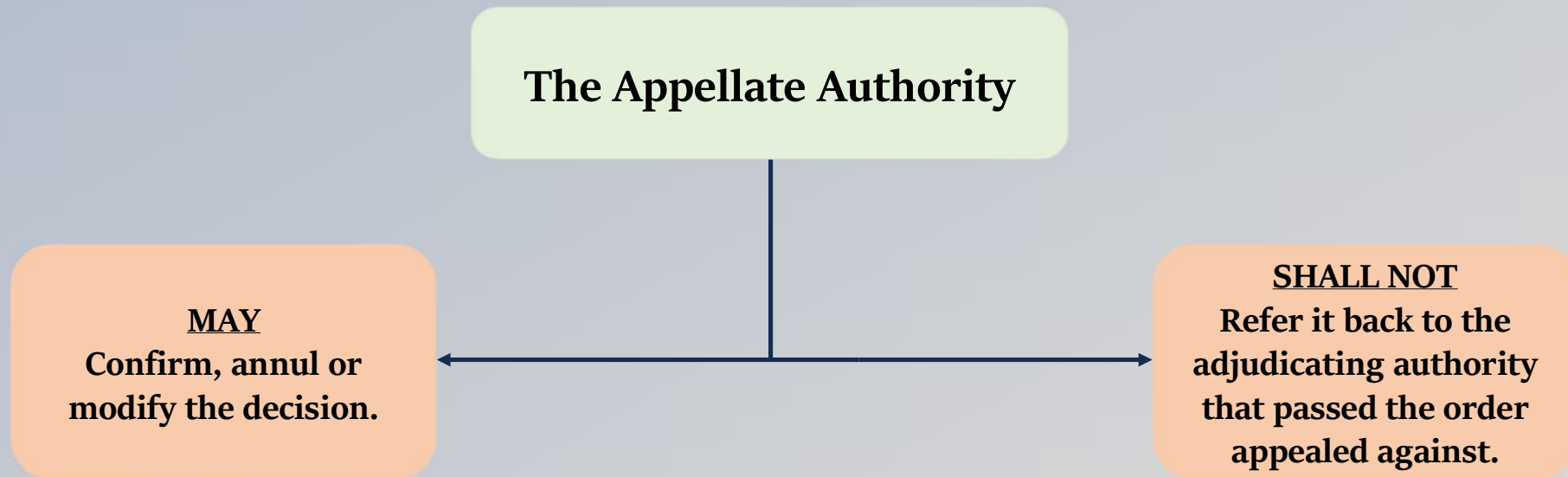


Hard copy of the Appeal to be submitted- No. Refer amendment in Rule 108 w.e.f. 26.12.2022



The Appellate Authority along with its order under 107(11), issue a summary of the order in **FORM GST APL-04** clearly indicating the final amount of demand confirmed.

Powers of the Appellate Authority



Any enhancement of fee/ penalty/ fine/ confiscation/ reduction in amount of refund or ITC – only upon giving the appellant a reasonable opportunity of showing cause against the proposed order.

*The Appellate Authority shall pass the order within 1 Year of the date of filing of the appeal, whenever possible.

Adjournment of Hearing [107(9)]

- Where the appellant gives sufficient cause for not attending the hearing, then the Appellate Authority shall grant time to the parties or any of them to adjourn the hearing with valid reason.
- No such adjournment shall be granted **more than three times** to the party during hearing of the appeal.
- It has been held in the context of past regime by the Court and Tribunal that one hearing notice cannot contain three dates, as that would not amount to granting reasonable opportunity. [[Regent Overseas Pvt. Ltd. Versus Union Of India](#)]

Appeal Time Limits

- The time limit for the party to file an appeal before the AA is 3 months [6 months for dept appeal] from the date of communication of the impugned order.
- **Condonable period**- a delay of up to one month, if the App. Authority is satisfied that there was sufficient cause for such delay [Sec 107(4)]
- ***Shri Ram Ply Product Versus Additional Commissioner, Grade 2 Appeal State Tax-*** limitation to file appeals before appellate authority is not 120 days, but four months and said period may be 121 or 122 days depending upon on which date Adjudicating Authority passes order.
- ***Rohit enterprises vs GST-*** in case of regn cancellation, the time limit is not applicable as it affects petitioner right to carry business (Article (19)(1)(g)].

Calculation of 3 Months

- In terms of Section 12(1) of the Limitation Act, in computing the period of limitation for an appeal, the day from which such period is to be reckoned, is to be excluded. Further, in terms of Section 12(2) of the Limitation Act, in computing the period of limitation, the day on which the judgment complained of was pronounced, is also to be excluded.
- Accordingly, even if it is assumed that the order was uploaded/communicated on the day it was signed i.e.12.08.2022, said date of 12.08.2022 is to be excluded while computing the period of limitation. Accordingly, the period of three months is to commence from 13.08.2022. Thus petitioner was liable to file the appeal by 12.11.2022. It is an admitted position that the appeal was filed along with a copy of the order, through the online mode on 12.11.2022, i.e. within the period of three months.
- Consequently, it is held that the appeal was within time and the impugned order erroneously rejects the appeal on the ground of limitation. Consequently, the impugned order dated 18.10.2023 is set aside. The appeal is restored on the records of the Appellate Authority. The Appellate Authority is now directed to decide the appeal on merits in accordance with law
- *[PRAMOD KUMAR TOMAR (PROP. M/S. PARAMOUNT STEEL) VERSUS ASSISTANT COMMISSIONERMUNDKA W. P. (C) 4401/2024]*

Calculation of 3 Months

- The term “month” is a fundamental unit of time in statutory interpretation, particularly in the context of legal deadlines and limitation periods. The term “month” can be interpreted in various ways, but in modern statutory contexts, it primarily refers to a calendar month. A calendar month is defined as the period from a given date in one month to the corresponding date in the following month. For example, a period of one calendar month from January 15 would end on February 14 and the next month in this context would begin from February 15.

[M/S BALAJI COAL TRADERS VERSUS COMMISSIONER, COMMERCIAL TAX, LUCKNOW AND OTHERS WRIT TAX NO. - 1614 OF 2022]

Calculation of 3 Months [not 90 days]

- While calculating the three-month period for filing an appeal, the starting point is the day following the date of communication of the order. For example, if an order is communicated on January 1, the three-month period begins on January 2 and ends on April 1

Communication date	January 1, 2024
Limitation begins from	January 2, 2024
Calculation of 3 months	January 2, 2024 to February 1, 2024
	February 2, 2024 to March 1, 2024
	March 2, 2024 to April 1, 2024
Limitation Ends On	April 1, 2024

Last date of passing of order [73(10)]

- *S 73(10)- 3 years from DD of Annual Return*

FY	Last date of order u/s 73	Normal Time Limit for appeal	Condonable Time Limit
17-18	31.12.2023	31.03.2024	30.04.2024
18-19	30.04.2024	31.07.2024	31.08.2024
19-20	31.08.2024		

Appeal filed beyond Limitation period.

- 4-8-2022: Assessment order and demand notice
- 3-11-2022: Normal appeal period expired (3m)
- 3-12-2022: Condonable period expired (additional 1 month)
- 1-12-2022: Rs. 11,53,720/- recovered from petitioner
- 27-12-2022: Appeal filed with Rs. 1,15,372/- pre-deposit
- Court view: Substantive right to redress grievance should not be curtailed particularly when Tax liability already recovered and over and above, Pre-deposit paid with appeal (27-12-2022). Department directed to consider the appeal and dispose of the appeal on merits
- *[S. BRITHIVIRAJAN Versus JOINT COMMISSIONER (ST) W.P.(MD) No. 8320 of 2024]*

APPEAL FORUM

Order Passed by	Appeal to be filed to	Section & rule
Adjudicating Authority	FAA	Sec 107, Rule 108,109,109A
< AC/JC	JC(A)	
AC/JC	Comm (A)	

PONJ to be followed

- Hearing the appellant,
- Allowing reasonable adjournments (not more than 3),
- Permitting additional grounds (if found reasonable), etc.
- The AA can also make such further inquiry as may be necessary

FORMS

Form No	Particulars
GST APL-01	Appeal to Appellate Authority section 107
GST APL-01W	Application for Withdrawal of Appeal Application
GST APL-02	Acknowledgment for submission of appeal
GST APL-03	Application to the Appellate Authority under section 107(2)
GST APL-03W	Application for Withdrawal of Appeal Application
GST APL-04	Summary of the demand after issue of order by the Appellate Authority, Tribunal or Court
GST APL-05	Appeal to the Appellate Tribunal section 112
GST APL-06	Cross-objections before the Appellate Tribunal
GST APL-07	Application to the Appellate Tribunal under section 112(2)
GST APL-08	Appeal to the High Court under section 117

Pre deposit

- The CGST Act, 2017 require an appellant before AA to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% (max 25 Cr) of the remaining amount of tax in dispute arising from the impugned order.

Particulars	Pre - Deposit Amount		
	10%	25% of Penalty	10 + 20%
Appeal	Yes	-	-
Appeal Against Seized Goods	-	Yes	-
Appeal In GSTAT	-	-	Yes

53rd GSTCM Recommendation

Particulars	Commissioner Appeal (1 st Stage of Appeal) S.107	GSTAT Appeal (2 nd Stage of Appeal) S.112
Existing percentage of Pre-deposit	10% of GST demand [Maximum upto Rs. 50 crores (CGST + SGST / IGST)]	Additional 20% of GST demand [Maximum upto Rs. 100 crores (CGST + SGST / IGST)]
Proposed percentage of Pre-deposit	10% of GST demand [Maximum upto Rs. 40 crores (CGST + SGST / IGST)]	Additional 10% of GST demand [Maximum upto Rs. 40 crores (CGST + SGST / IGST)]

53rd GSTCM Recommendation Impact

Particulars	CGST (in Cr)	SGST (in Cr)	Total (in Cr)
Tax	300	300	600
Interest	5	5	10
Penalty	300	300	600

Particulars	Existing Pre Dep	Proposed Pre Dep
Appeal with Comm Appeal	Lower of (10% of 600 Cr, 50 Cr) i.e. 50 Cr	Lower of (10% of 600 Cr, 40 Cr) i.e. 40 Cr
Appeal with GSTAT	Lower of (20% of 600 Cr, 100 Cr) i.e. 100 Cr	Lower of (10% of 600 Cr, 40 Cr) i.e. 40 Cr
Total	150 Cr	80 Cr

Pre deposit from bank account which is provisionally attached?

BYTEDANCE (INDIA) TECHNOLOGY (P.) LTD. Versus UNION OF INDIA Writ Petition (L) No. 8537 of 2024

- Assessee' s Bank Account Provisionally Attached
 - A Show cause notice was adjudicated, and Assessee filed appeal under Section 107 of CGST Act, 2017
 - Pre-deposit of 10% of disputed tax amount required for appeal
- Petitioner's Request:
 - Sought permission to withdraw pre-deposit amount from provisionally attached bank account
- Court's Decision:
 - Pre-deposit amount not for private purpose, but to maintain appeal. Petitioner permitted to operate bank account for withdrawing pre-deposit amount
 - Petitioner allowed to use electronic transfer (NEFT/RTGS) for depositing pre-deposit. Provisional attachment of bank account lifted only for pre-deposit amount. No other purpose permitted for operating the attached bank account

Interest on Refund of Pre-Deposit Amount

- Clause (2)(d) of the concluding Explanation under Section 54 of the Act- before the expiry of two years from the date of communication of the judgment of such authority
- **Section 115** *Where an amount paid by the appellant under sub-section (6) of section 107 or sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.*
- interest at the rate of **9%** [Proviso S. 56 & NN 13/2017] shall be payable in respect of such refund

Authorized representative [u/s 116]

“authorized representative” shall mean a person authorized by the person referred to in sub – section 1 to appear on his behalf who may be –

His relative or regular employee; or

An advocate who is entitled to practice in any court in India and who has not been debarred from practicing before any court in India; or

Any Chartered Accountant, Cost Accountant or a Company Secretary who holds a certificate of practice and who has not been debarred from practice; or

Any person who has been authorized to act as a goods and service tax practitioner on behalf of the concerned registered person.

Withdrawal of appeal [R. 109C]

- The appellant may anytime withdraw the appeal **before:**
 - issuance of show cause notice under 107(11) or
 - before issuance of order under the said sub section

which ever is earlier.
- In case the appellant wants to withdrawn the appeal application **after the issuance of FORM GST APL-02** the withdrawal shall be subject to the approval of the Appellate Authority
- **Fresh appeal to be filed within the time limits u/s 107**

Documents Checklist

The following documents are required to be submitted to the Appellate Authority while submitting GST APL – 01:

- Notice of the Adjudicating Authority (Copy)
- Order and Demand Notice of the assessing authority in original/ attested copy
- Reply to SCN
- Power of Attorney
- Documents supporting the facts of the case
- Condonation of delay application (if any)
- 10% tax payment details (mandatory pre-deposit)

Practical Issues

- While filing appeal pre deposit amount debited from cash ledger but while submitting appeal error occurred "Appeal can be filed only after complete payment of taxes as calculated in table 15(a), please make the payment of the balance dues and try again.
- Solution: Edit the pre- deposit field to 0%. While uploading the Annexure to APL 01, upload a letter explaining that a sum equal to the pre- deposit had got debited to cash ledger and requested for treating such debit as pre-deposit



Practical Issues

- While filling APL-1 online error msg shows "*Disputed/Admitted amount for each IGST minor head across Place of Supply should be equal to the amount entered in the IGST table of the application field. Please enter correct Tax/Cess, Interest , Penalty, Fees, other value(s)*" .

There is no option to select the place of supply in the table of fee.

How to correct this error

- click on IGST, its a hyperlink



28. Click the **Integrated Tax** hyperlink to enter Place of Supply wise details. Enter the details and click the **ADD** button to enter another Place of Supply wise details.

Please fill the Admitted amount/Disputed amount for respective Place of Supply.



Summary IGST						
Particulars	IGST Amount	Tax/Cess	Interest	Penalty	Fees	Others
Total	Initial Amount	1000	100	100	0	100
	APL-01 Disputed Amount	0	0	0	0	0
	Admitted Amount	0	0	0	0	0

Detailed IGST							
Place of Supply	IGST Amount	Tax/Cess	Interest	Penalty	Fees	Others	Action
	Initial Amount	1000	100	100	0	100	
Delhi	Disputed Amount	<input type="text" value="1000"/>	<input type="text" value="100"/>	<input type="text" value="100"/>	<input type="text" value="0"/>	<input type="text" value="100"/>	NA
	Admitted Amount	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	<input type="text" value="0"/>	



FAQ



In absence of Constitution of GST Appellate Tribunal, when does the time to file appeal begin ?



How to make pre – deposit as appellate tribunal is not yet constituted ?



Whether the voluntary deposit paid under protest can constitute the pre-deposit for pursuing the appellate remedy ? *[Vinod Metal Vs State of Maharashtra]*

Best Practices on receipt of order

- Date of receipt of order
- Whether uploaded or physically served
- Whether service as per Sec 169
- What is the time limit to file appeal
- What is the pre deposit required
- Who is the Appellate Authority
- Whether to pay the demand or litigate
- Can writ petition be filed?

Best Practices on receipt of order

- Make a summary of the issues-
 - Allegation in SCN,
 - Reply in SCN point wise,
 - findings in the order,
 - Demand dropped/confirmed in the order

53rd GST Council Recommendations

Insertion of S. 128A- Amnesty scheme for waiver of interest and penalty for S.73 notices for the years 2017-18, 2018-19 and 2019-20, provided the full demand of tax is paid before 31st March 2025

Minimum threshold prescribed for departmental appeal if the demand is up to Rs. 20 lakhs under GSTAT, up to Rs. 1 crore High Court & up to 2Crores in Supreme Court [Cir 207/1/2024]

53rd GST Council Recommendations

S. 74A common time limit- Insertion of a new Section 74A in CGST Act, to provide for common time limit for issuance of demand notices and orders irrespective of whether case involves fraud, suppression, wilful misstatement etc

The time limit for the taxpayers to avail the benefit of reduced penalty, by paying the tax demanded along with interest, has been recommended to be increased from 30 days to 60 days

Government to prescribe a mechanism for adjusting an amount paid through DRC-03 against the amount to be paid as pre-deposit for appeal

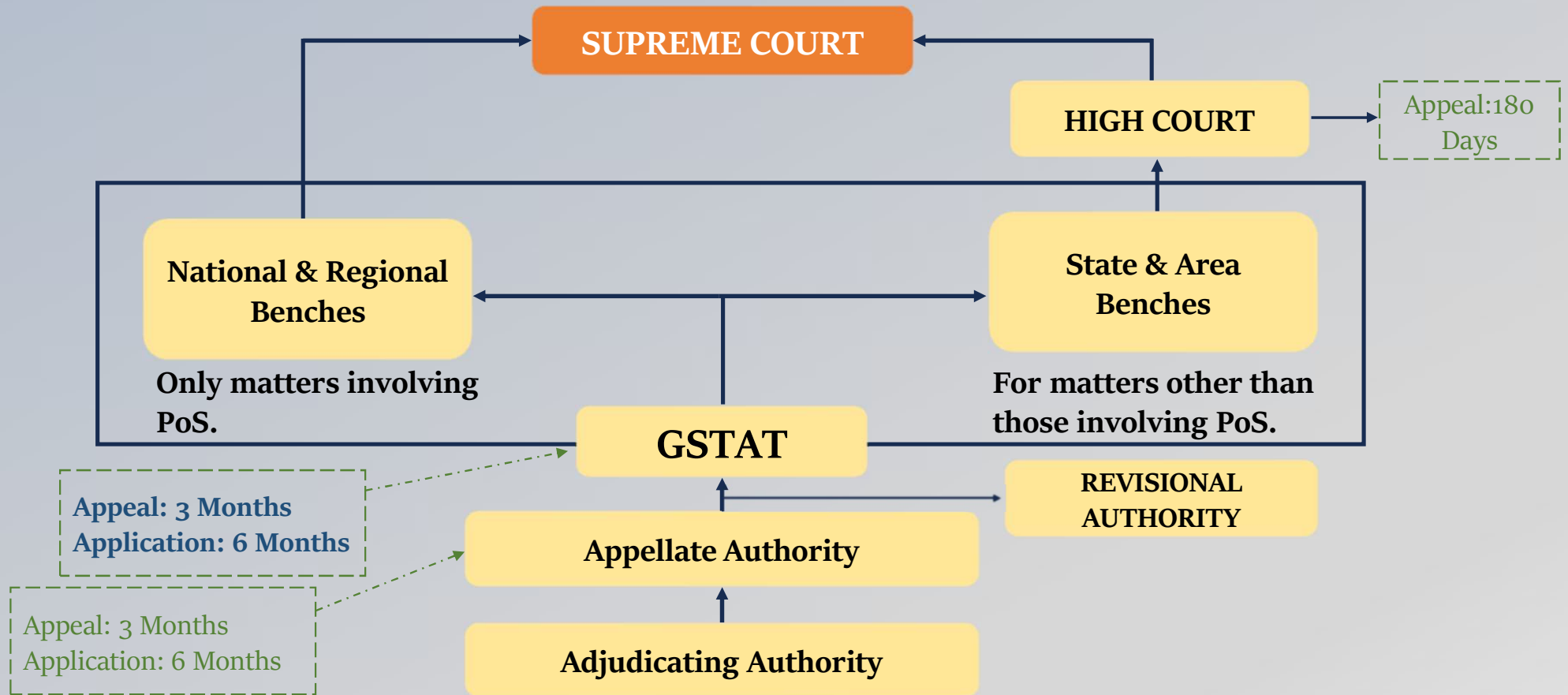
Grounds on which a Writ Petition (A. 226) can be entertained

- Where the Writ Petition has been filed for the **enforcement of fundamental rights** guaranteed under Part III;
- Where the Writ Petition has been filed for the **enforcement of Constitutional rights** (other than fundamental rights) of the Petitioner;
- Where the Writ Petition has been filed **challenging the vires of a legislation** including legislative competence;
- Where the Writ Petition has been filed **challenging the vires of delegated legislation** such as rule, regulation, notification, circular or the like where it is alleged that such delegated legislation travels beyond the scope of its ancillary principal legislation;
- Where the Writ Petition has been filed alleging the **violation of principles of natural justice**; and
- Where the Writ Petition has been filed alleging that the **Order/ Notice is wholly without jurisdiction**.

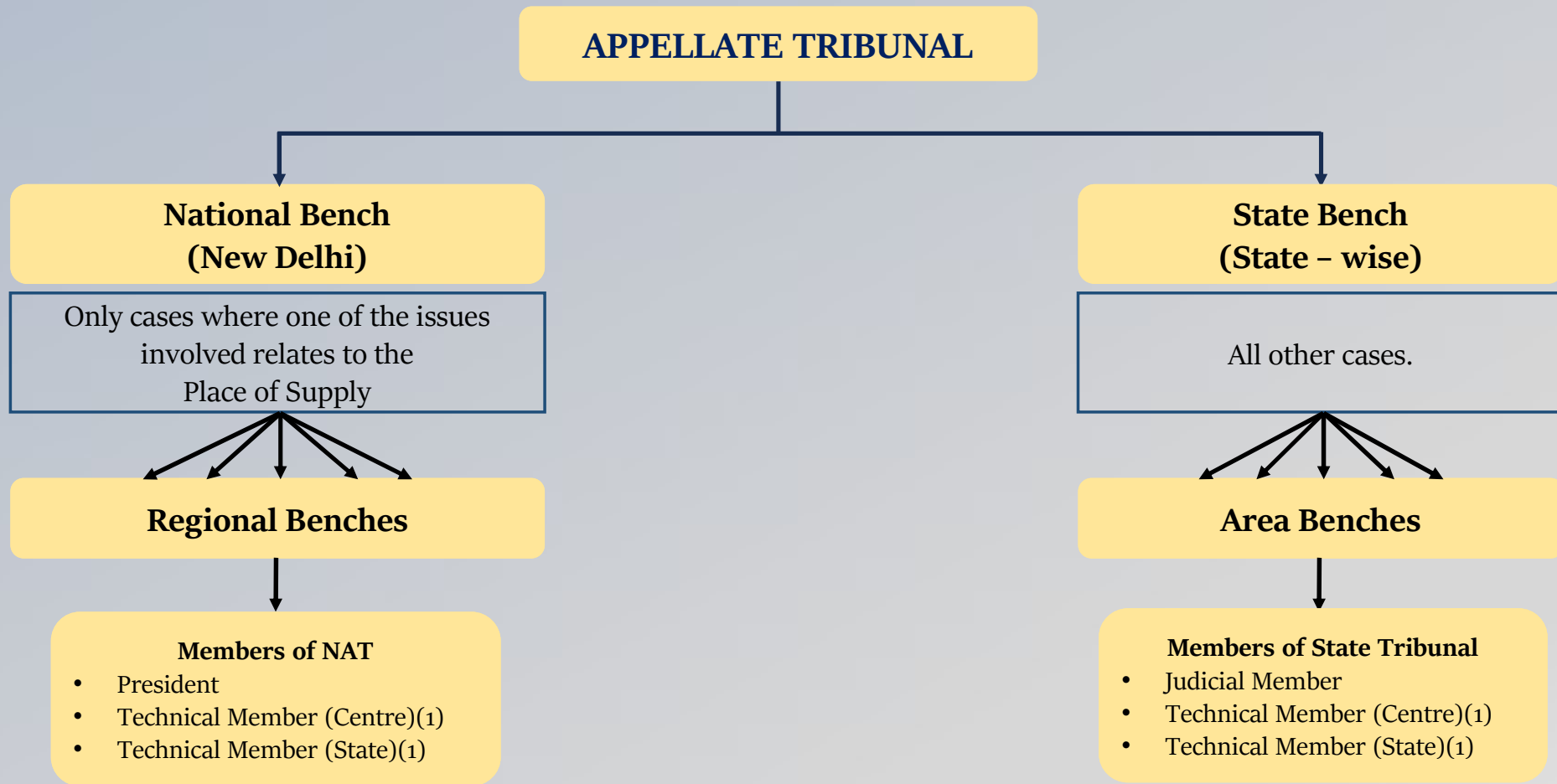
Grounds on which a Writ Petition can be Entertained

- Even in the presence of an alternative remedy, in the satisfaction of any of the aforesaid conditions, a Writ Court would entertain the petition
- HC will not entertain a petition which involves a significant question of fact.
- When a statute provides a remedy in the form of appeal against an adjudication made, such remedy must be resorted to and only sparingly, should Writ Petitions be entertained unless any of the conditions as highlighted in Whirlpool Corporation (supra) or Radha Krishan Industries (supra) are satisfied.

GSTAT – section 109



Appellate Tribunal





Thank you !

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