

✓ TS GST SCN's,
Assessment,
Adjudication,
Revision &
Appeals.



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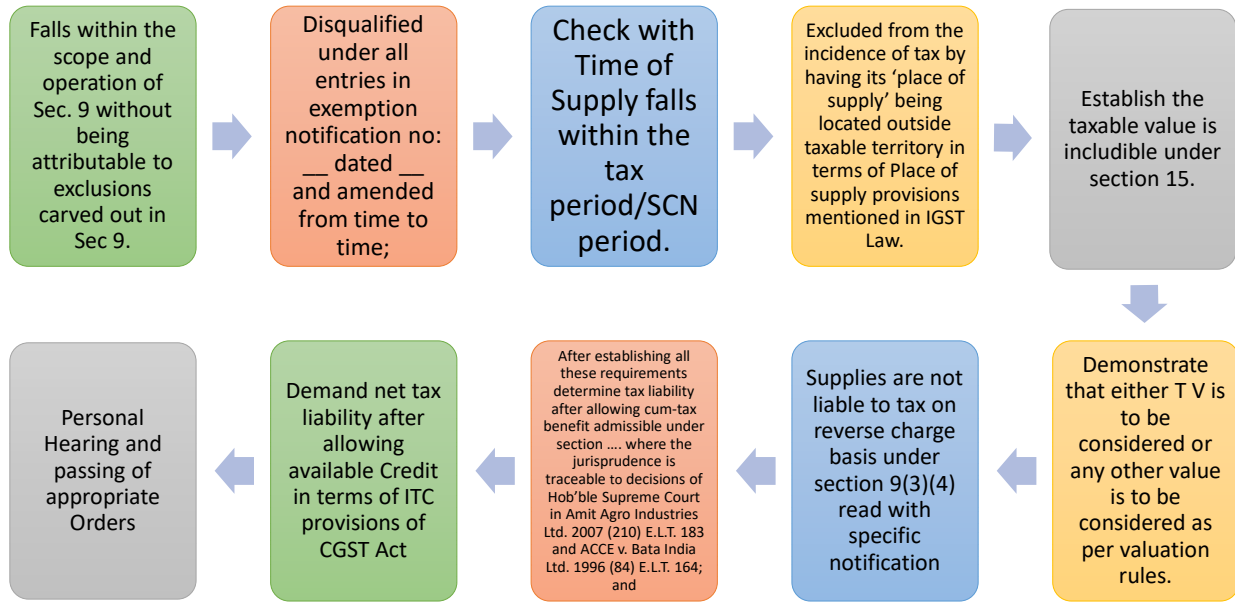
H S Tax Advisory (P) Ltd.

(Approved & Registered with ICAI & MCA)

Telangana State GST SCN

Process to be adopted before issue SCN & Confirming the Demand

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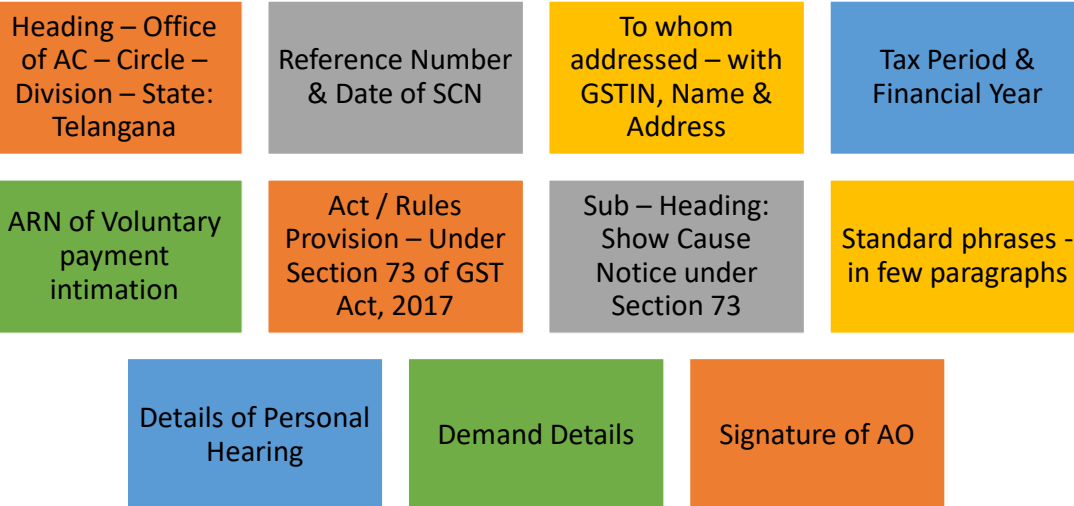


Telangana State GST Notices – November, 2021

Four Documents

1. Show Cause Notice U/s. 73
2. Summary of Show Cause Notice U/s. 73
3. Attachment to Show Cause Notice in Form DRC-01
4. Annexure to Attachment to SCN in Form DRC-01

Typical content of Show Cause Notice U/s. 73



Typical content of Summary of Show Cause Notice

| | | | |
|--|---|--|---|
| Heading - Form GST DRC – 01 (Rule under which issued) | Reference Number & Date of issue | To whom issued with GSTIN, Name & Address | Tax Period & Financial Year |
| SCN Reference No: | Section / Sub – section under which SCN is issued – 73 | Act / Rules Provisions – U/s. 73 of GST Act'2017 | Sub – Heading: Summary of Show Cause Notice |
| Brief Facts of the case | Grounds: U/s. 73 of GST Act' 2017 | Tax & other dues – Table – with Rate of Tax “0 “ and Turnover “0” | Signature of AO |

Typical content of Attachment to SCN in Form DRC-01

| | | |
|--|---|---|
| Heading – Govt. of Telangana, Commercial Taxes Department | DIN – GST/GSTIN/XX – 20 digit | AO Details - Office, Designation, Unit & Division |
| Details of Tax Payer – Name, Legal Name & GSTIN | Financial Year | Matter Starts with – You have filed annual return in GSTR-9 for FY |
| On Examination information furnished in TRAN-1, GSTR- 01, GSTR-2A, GSTR-3B, EWB and other records comparison with GSTR-9 | Summary of underdeclared tax is as flows: SGST- Rs. , CGST – Rs. & Total Rs. | Further details in next slide |

The details of the tax liability are as follows


Net Tax liability under declared on account of non-reconciliation of information

- The tax on outward supplies under declared or reconciliation of data in GSTR-9
- The excess ITC claimed on account of non-reconciliation of information declared in GSTR-09.

Excess Claim of ITC

- Excess claim of TRAN-1
- Under declaration of ineligible ITC

Annexure to Attachment of SCN in Form DRC-01 – contains Sec. 17(5) details – Basis ?



**Assessment,
Adjudication,
Revision &
Appeals.**



Relevant definitions

Adjudicating Authority – 2(4)

“adjudicating authority” means any authority, appointed or authorised to pass any order or decision under this Act,

but does not include

- the Central Board of Excise and Customs,
- the Revisional Authority,
- the Authority for Advance Ruling,
- the Appellate Authority for Advance Ruling,
- the Appellate Authority and
- the Appellate Tribunal;

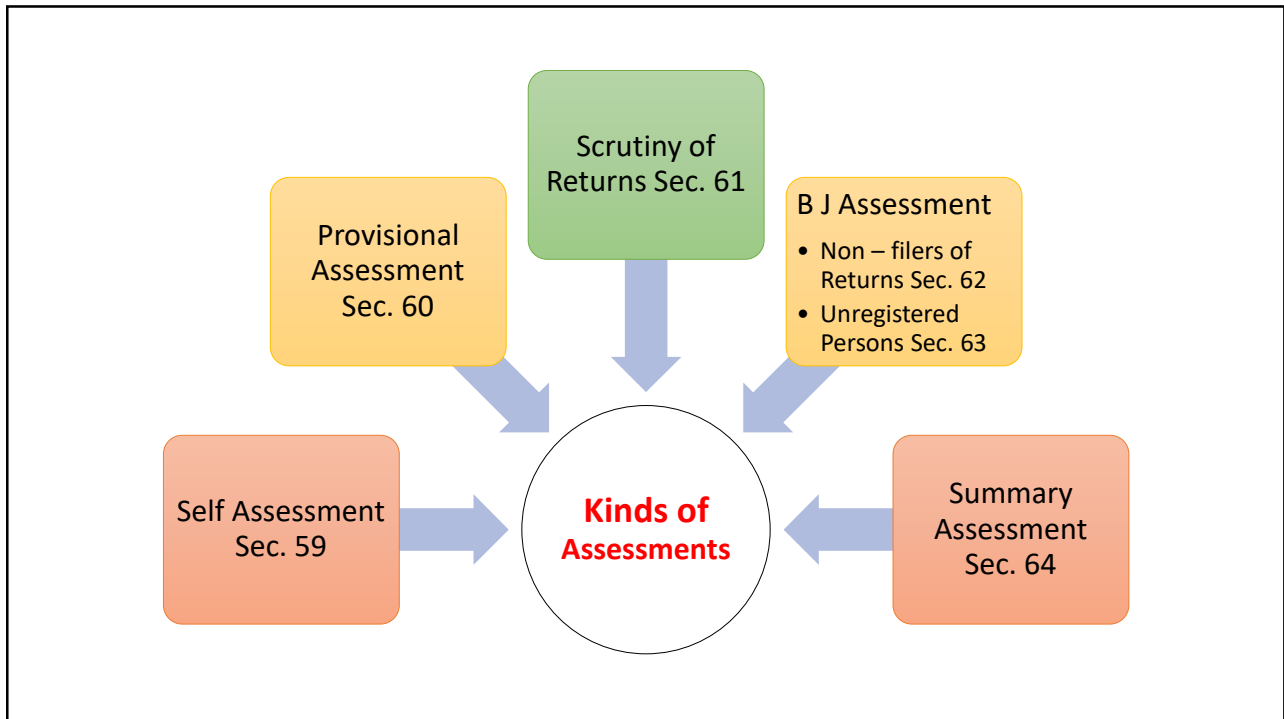
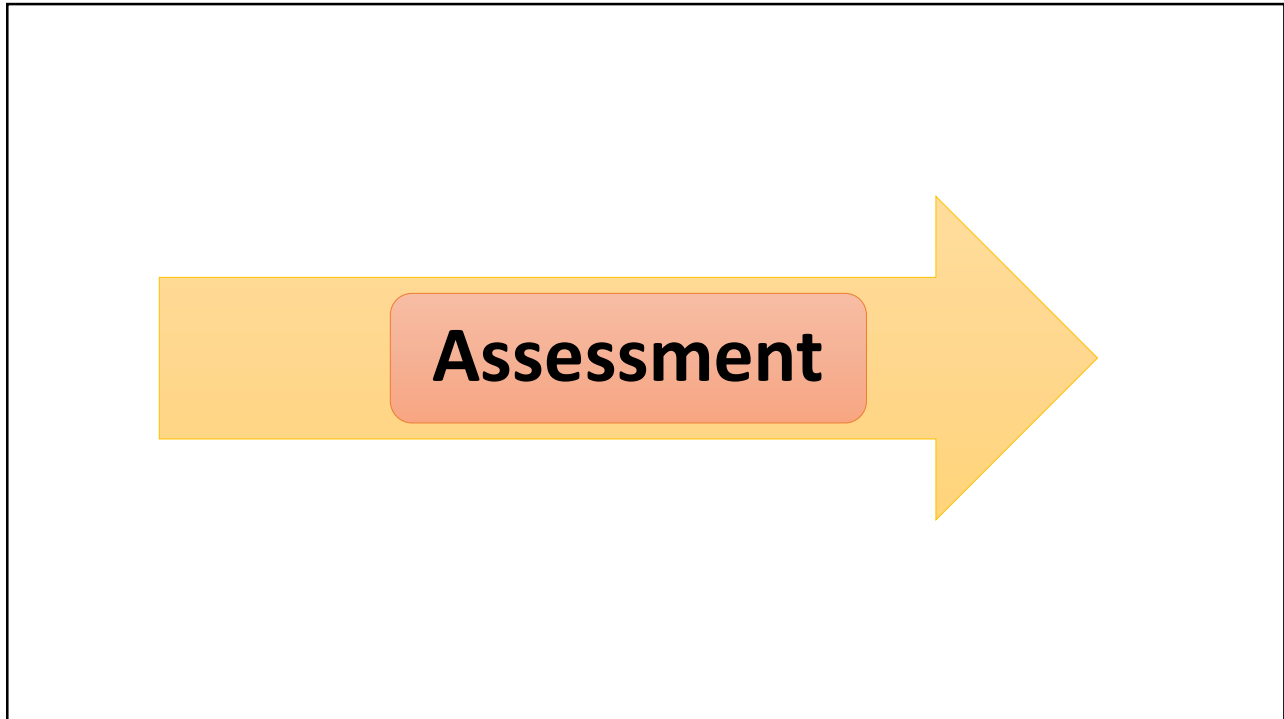
Assessment – 2(11)

“assessment” means

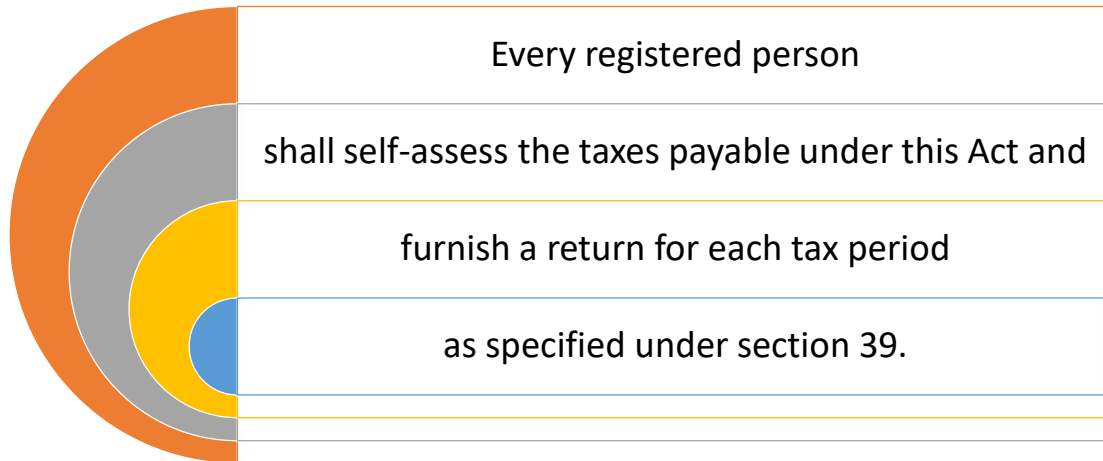
- determination of tax liability under this Act and
- includes self-assessment,
- re-assessment,
- provisional assessment,
- summary assessment and
- best judgment assessment;

Proper Officer - 2(91)

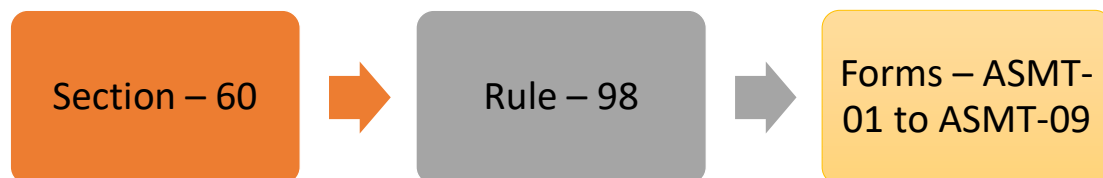
“Proper Officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board.

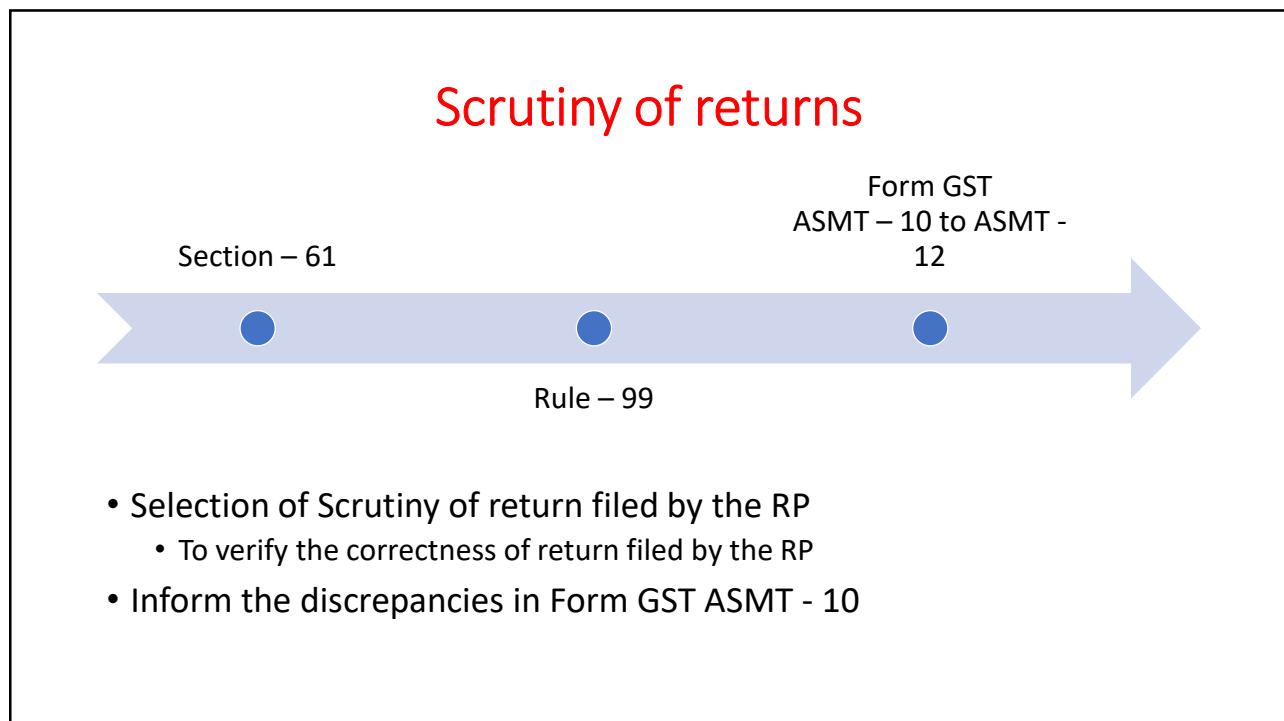
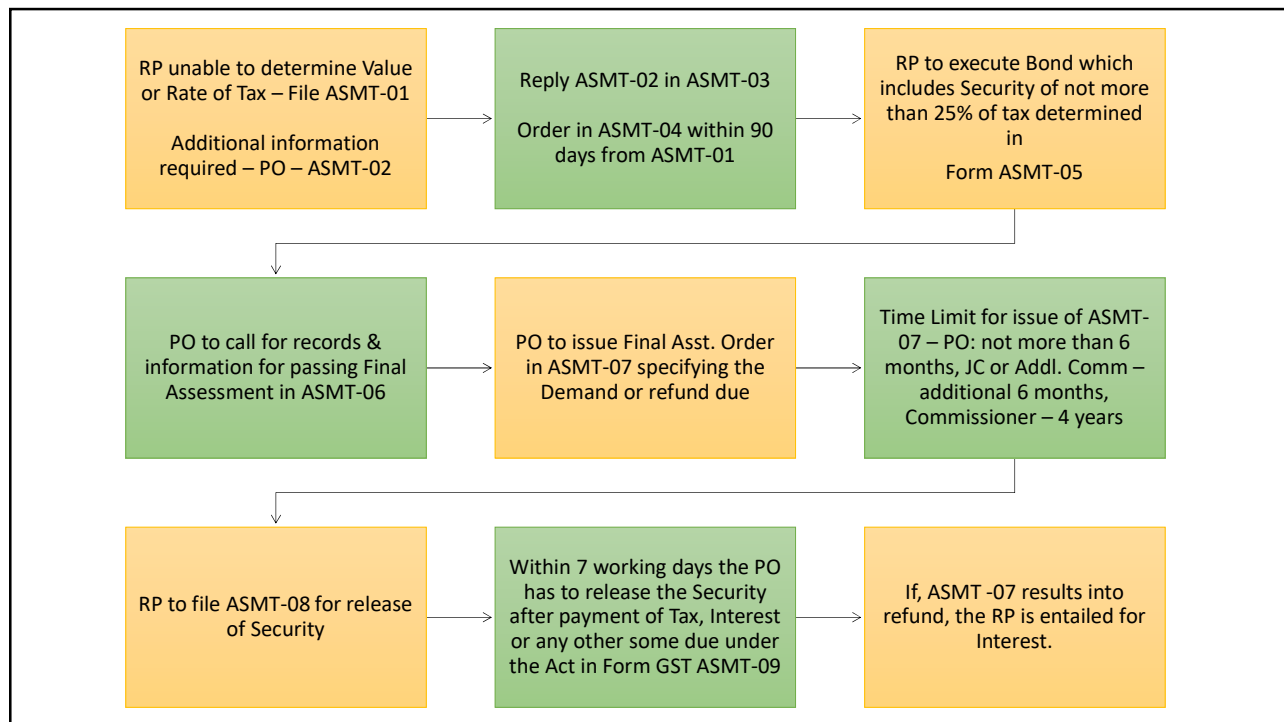


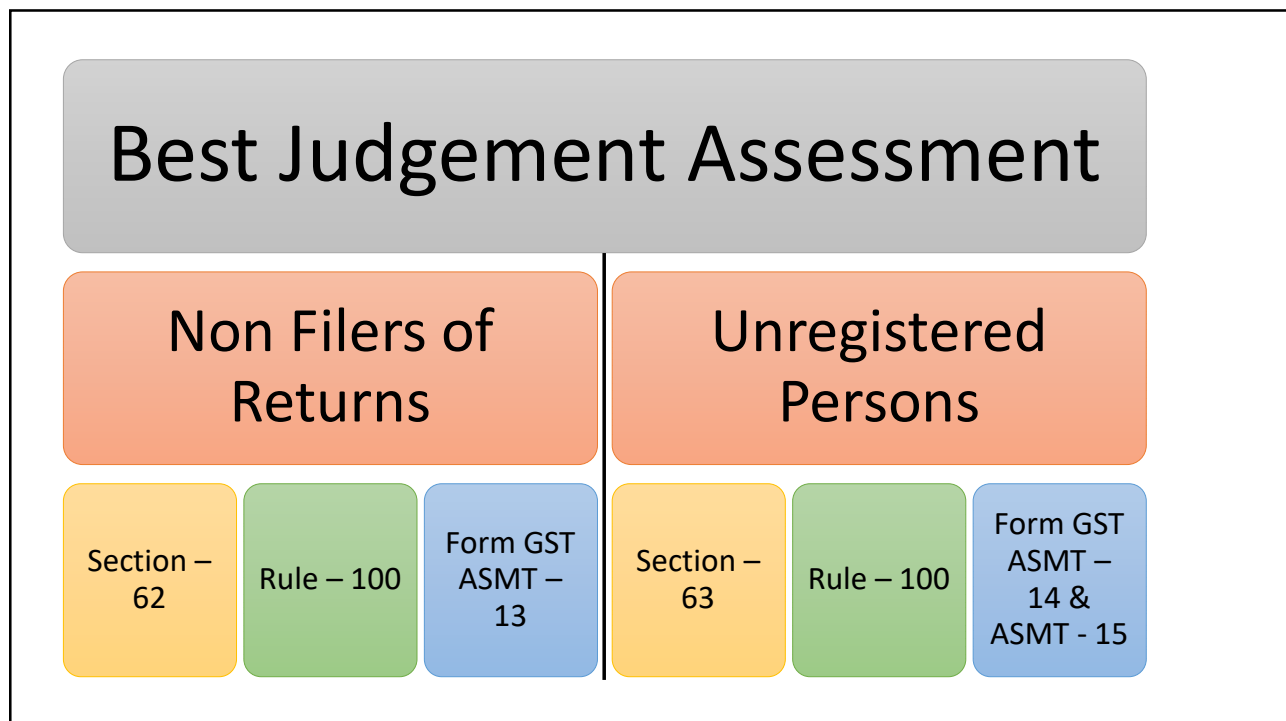
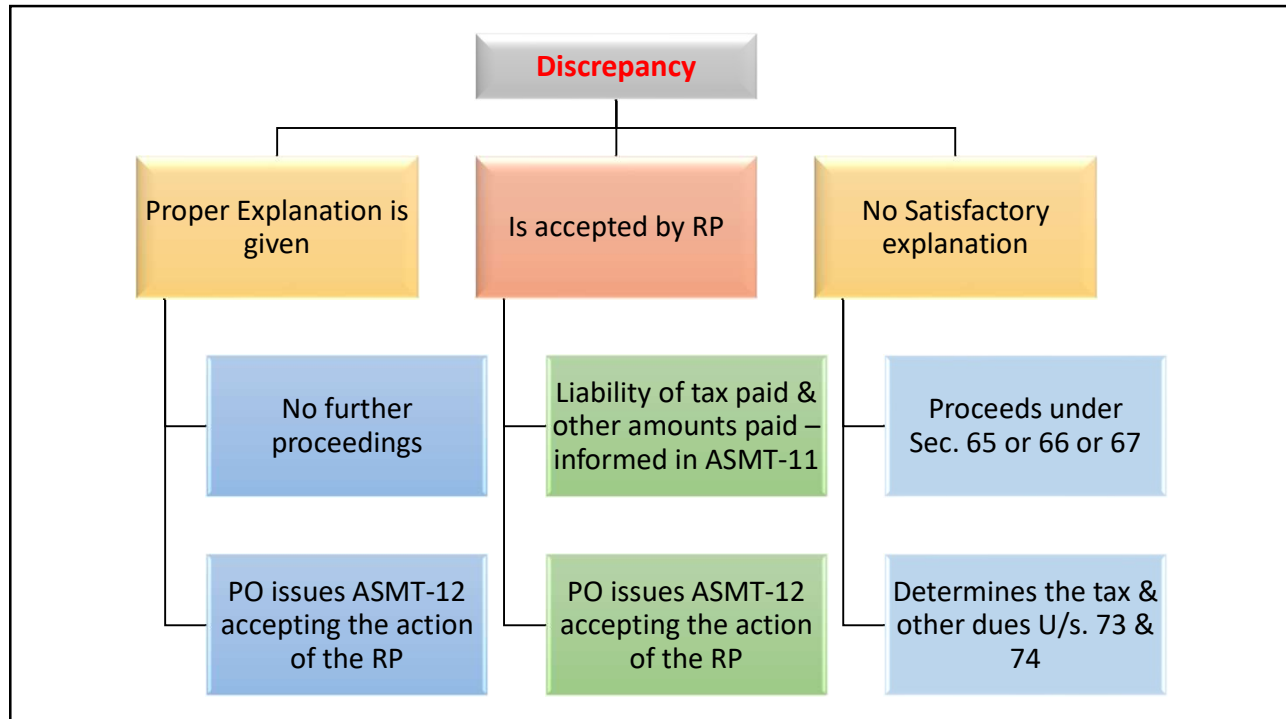
Self Assessment – Sec. 59



Provisional Assessment







BJA - Non Filers of returns

The PO issues Notice in GSTR- 3A U/s. Sec. 46 to RP in case of default in furnishing the Return U/s. 39 or U/s. 44 or U/s. 45

15 days time is granted to the RP for filing the return

Based on the information available on record or gathered by PO

Issues an assessment order in Form GST ASMT – 13 to the best of his judgment

Time Limit – Five Years from the due date for filing return U/s. 44

- July, 2017 – 31-03-2019 – 31-03-2024

After issue of Asst. Order – RP Filed valid return

- With in 30 days of Asst. Order
- The Asst. Order is deemed to be withdrawn
- The liability for Interest & Late Filing Fee shall continue

BJA – Unregistered Persons

Applicable in case of

- Liable to registration – has not taken registration
- Whose registration has been cancelled – liable to tax

PO has to issue notice in Form GST ASMT- 14

- 15 days time is allowed to file reply to the notice
- Opportunity of being heard is given

PO proceed to pass Asst. Order in Form GST ASMT – 15

Time Limit – Five Years from the due date for filing return U/s. 44
July, 2017 – 31-03-2019 – 31-03-2024

Summary Assessment in Certain Special Cases

- Section – 64
- Rule – 100
- Form – GST ASMT- 16 to ASMT - 18

Summary Assessment in Certain Special Cases

Applicable only if, two following conditions exists

- On any evidence showing a tax liability of a person coming to his notice
- He has sufficient ground to believe that any delay in doing so may adversely effect the interest of revenue

Prior Approvals required

- Joint Commissioner or Additional Commissioner

Issue Asst. Order in Form GST ASMT – 16

Withdrawal of Assessment Order

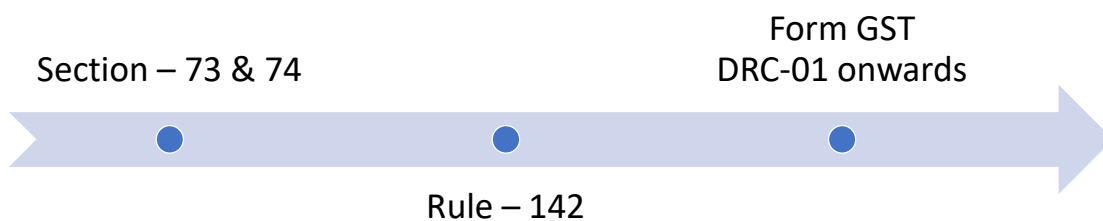
- RP within 30 days of Asst. Order file Form GST ASMT - 17
- Joint Commissioner or Additional Commissioner
- Considers such order is erroneous
- The PO may withdraw such order or rejection of such application – ASMT - 18



Determination of tax

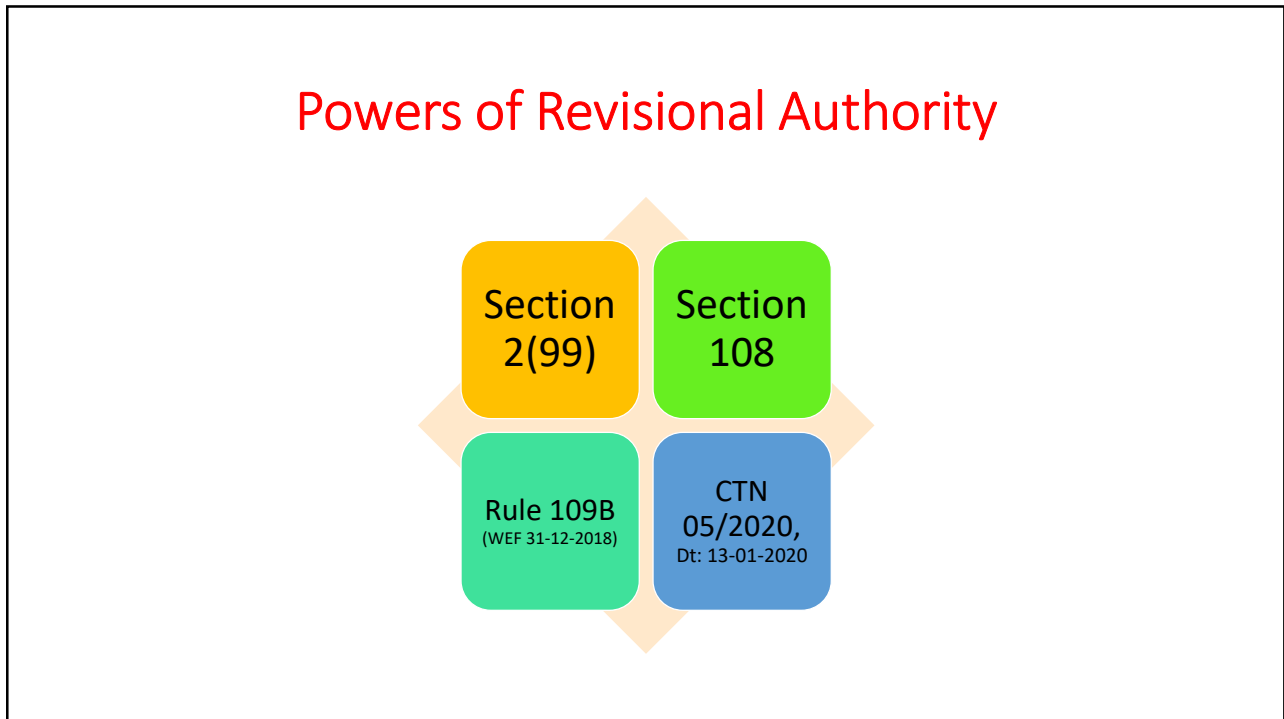
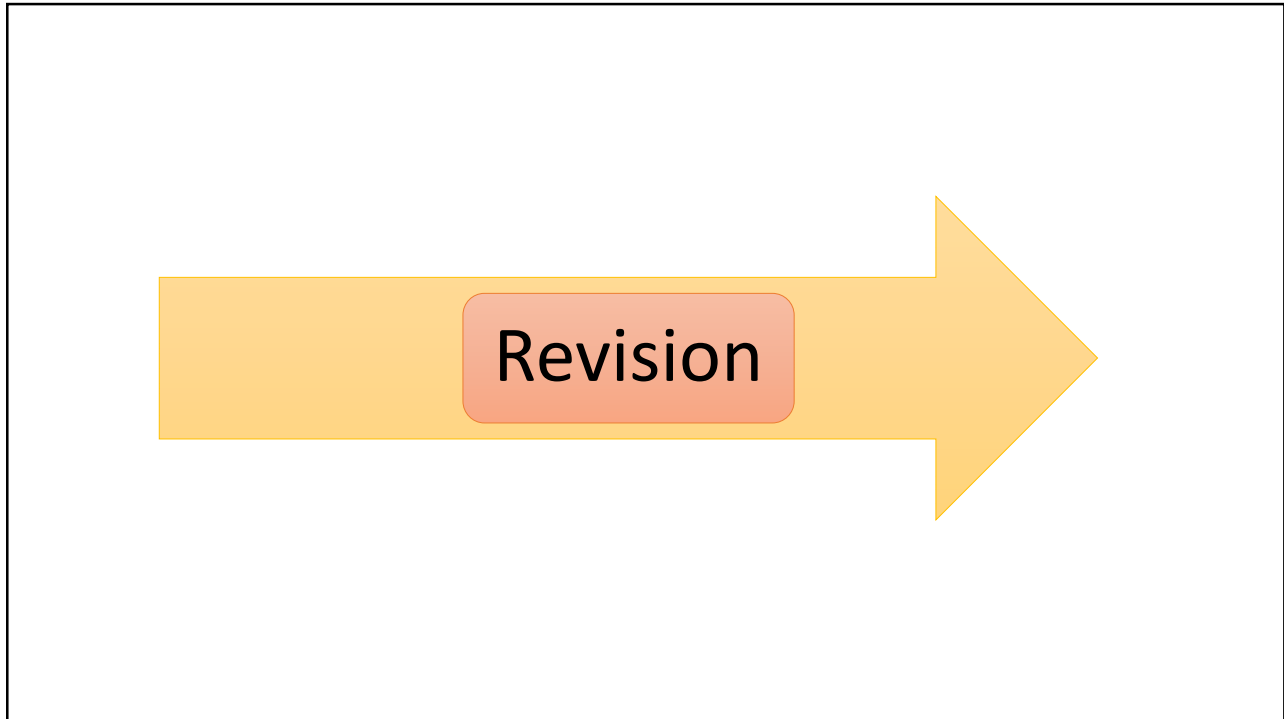
Sec. 73 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason **other than fraud or any wilful misstatement or suppression of facts.**

Sec. 74 - Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of **fraud or any wilful misstatement or suppression of facts.**



| Particulars | Section 73 | Section 74 |
|--|---|--|
| When to issue notice | PO shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not <u>pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.</u> | PO shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not <u>pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.</u> |
| fraud or any wilful misstatement or suppression of facts | NO | Yes |

| Particulars | Section 73 | Section 74 |
|----------------------------------|--|--|
| Order to be passed | Determining the Tax, Interest & penalty @ 10% or Rs. 10,000/- whichever is higher | Determining the Tax, Interest & Penalty |
| Time limit for Show Cause Notice | Three months prior to last date of three years determined below | Six months prior to last date of five years determined below |
| Time limit for Order | Within three years from the due date for filing the Annual Return, or Within three years from the date of erroneous refund | Within five years from the due date for filing the Annual Return, or Within five years from the date of erroneous refund |



Revision under GST

For the purpose of this section, the term -

- “Record” shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority.
- “Decision” shall include intimation given by any officer lower in rank than the Revisional Authority

Who is Revisional Authority

CTN 05/2020, Dt: 13-01-2020 issued in pursuance of Section 5 read with Section 2(99).

- (a) the Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and
- (b) the Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax, are

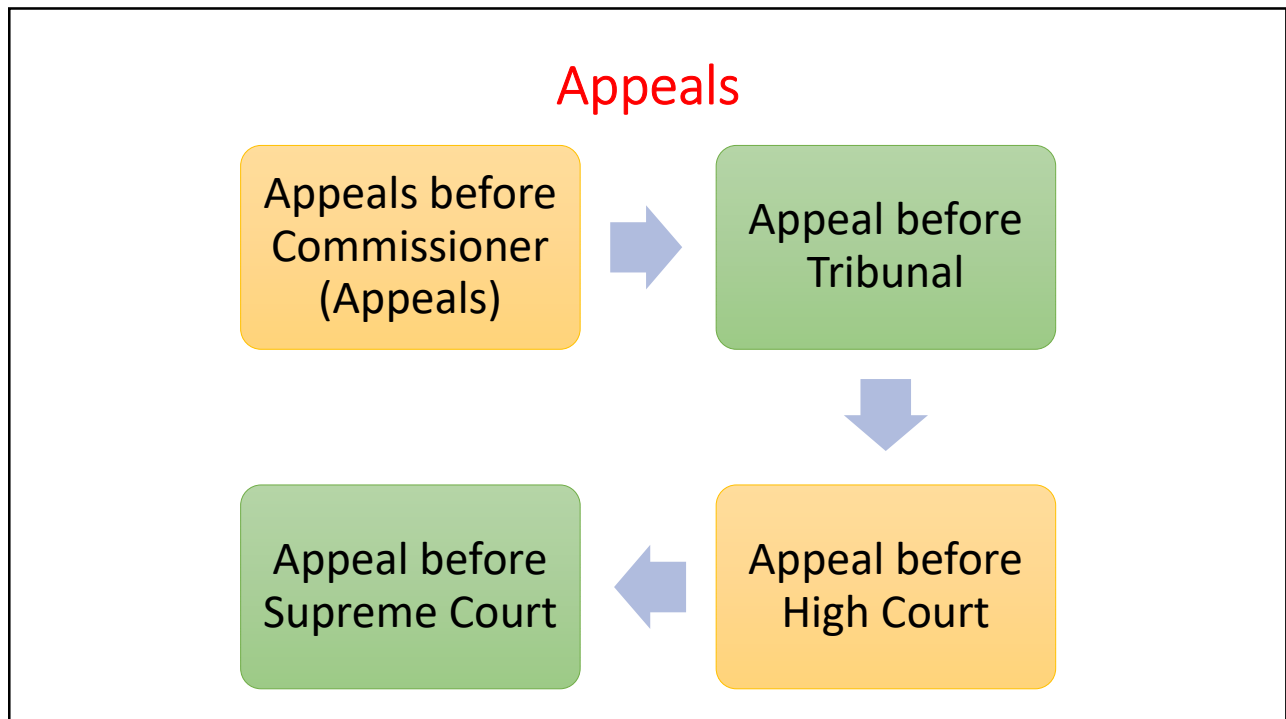
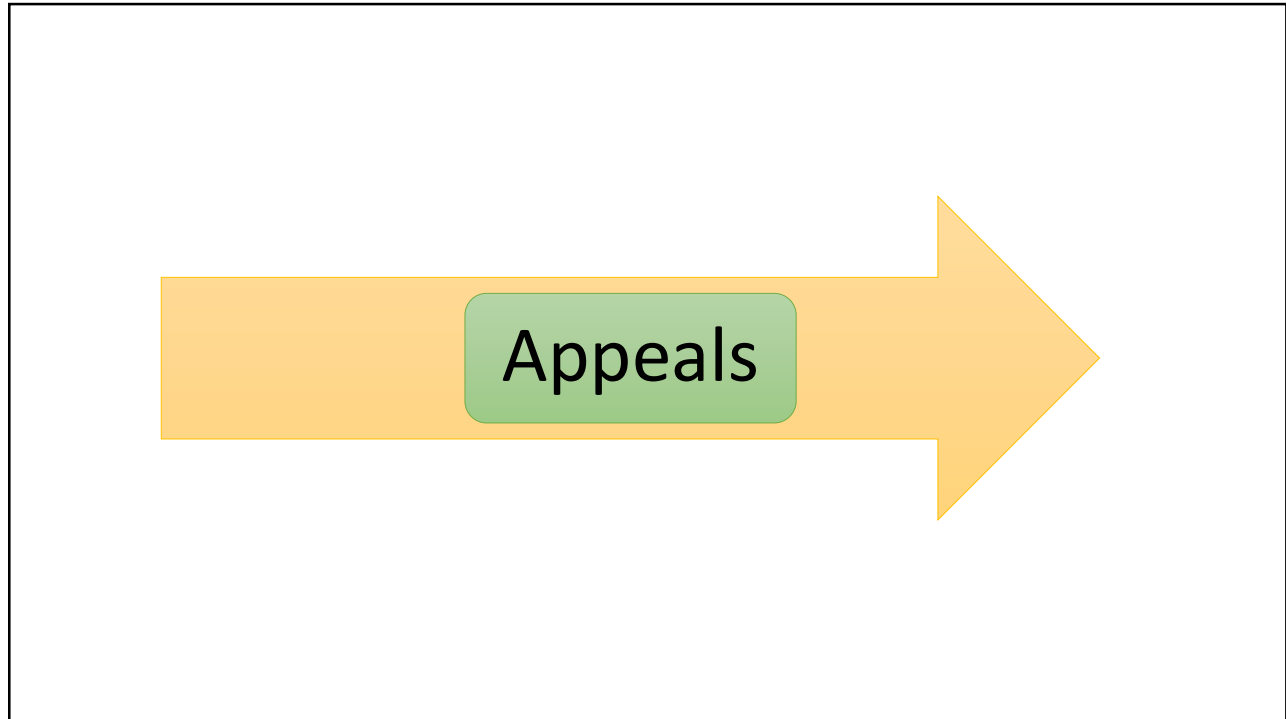
Revisional Authority under section 108 of the said Act.

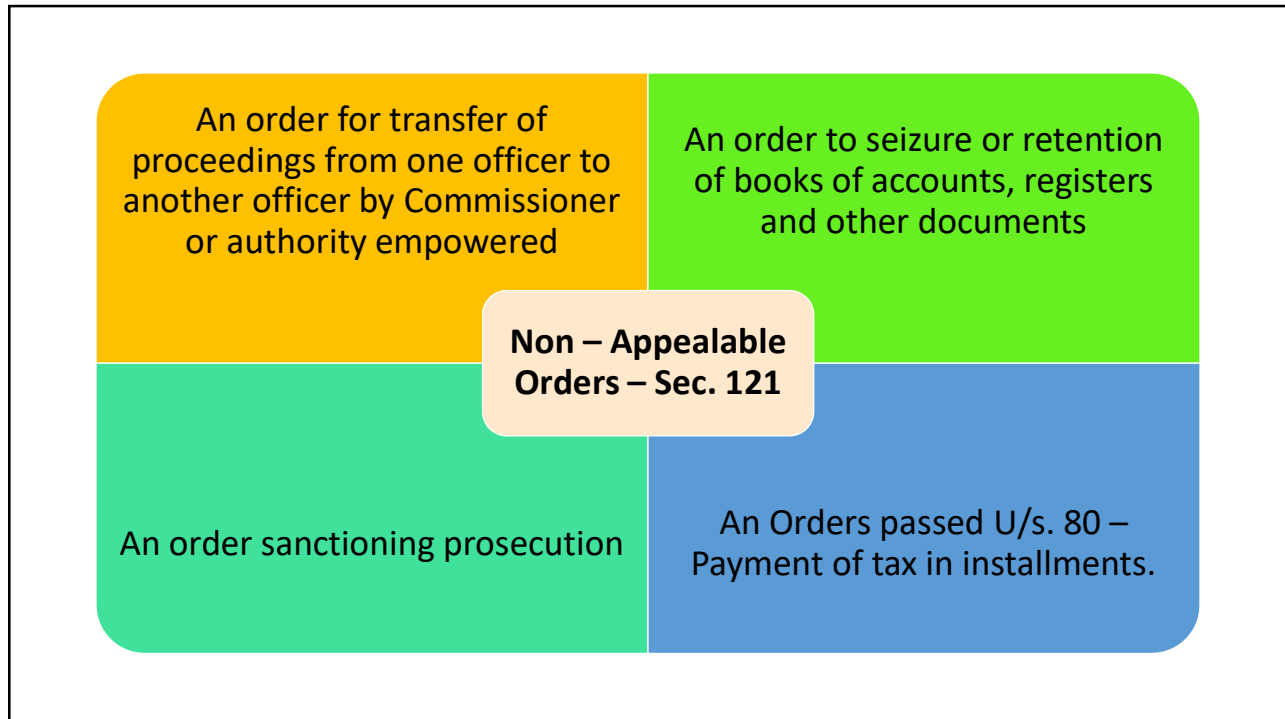
When revision can be initiated

- Subject to Section 121
 - On his own motion
 - Information or request received from
 - State Commissioner
 - Union Territory Commissioner
- Orders or decisions are
 - Erroneous – prejudicial to the interest of revenue, or
 - Illegal or improper or issue of order/decision without considering material on record or not, or
 - Observations by the Comptroller and Auditor General of India

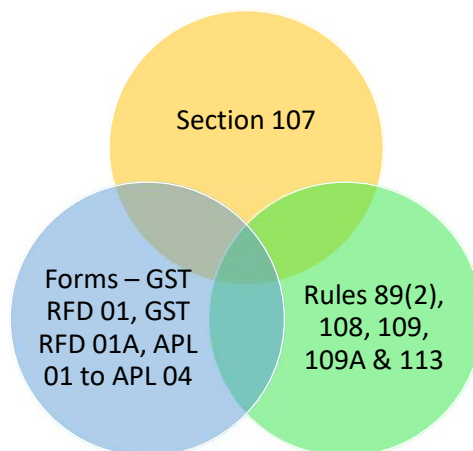
Limitation / Restriction on Revisional Powers

- Order which is subjected to First Appeal / Tribunal / High Court / Supreme Court
- Time limit for Department to apply for First Appeal – 6 months from the date of order.
- Expiry of three years from the date of passing of order
- Revision taken at an early stage under this section.
- Order passed in exercise of powers under Sub-Section 1 of Sec. 108.
- Exception:
 - Any point which is not raised or decided in First Appeal / Tribunal / HC / SC.
- Every order U/s. 108 is subject to Appeal before Tribunal / HC / SC.





Appeal to Appellate Authority



Appeal to Appellate Authority

| Who is Appellate Authority | Who can file appeal before Appellate Authority: | Time limit for filing appeal |
|---|--|---|
| <ul style="list-style-type: none"> CTN 02/2017, Dt: 19-06-2017, WEF 22-06-2017 | <ul style="list-style-type: none"> Any person aggrieved by any decision / order Commissioner on behalf of Department | <ul style="list-style-type: none"> Any person – within three months from the date of service of order Commissioner – within six months from the date of service of order One month condonation is available to both – on sufficient ground |

Appeal to Appellate Authority

Pre – deposit:

100% of undisputed Tax, Interest, Penalty, Fine, Fee & Etc.
 10% of Disputed Tax – Max Rs. 25.00 Cr.
 25% of Penalty in case of proceedings relating to Sec. 129(3).
 Upon paying the above amounts, the balance is stayed automatically.

Opportunity of Personal Hearing – max 3 adjournments

Addition grounds permitted – omission is unwilful and unreasonable

Confirm – Modify – annul – no remand back to AO

Enhancement of demand not permitted without reasonable opportunity

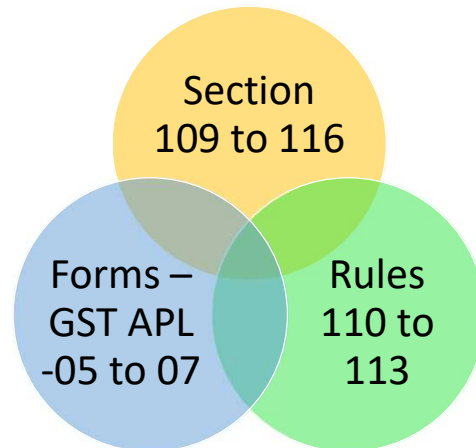
AA is of opinion – Tax not paid – Short Paid – Erroneous Refund – Availed ITC wrongly – Wrong utilization of ITC – SCN - Time limit as per Sec. 73 or 74 as the case may be.

AA has to pass speaking order specifying the reasons and ground for conclusions – with in one year

Orders of AA subject to appeal under Sec. 108, 113, 117 & 118 and are final & binding.

Procedure

Appeal to Appellate Tribunal



Provisions relating to Appellate Tribunal

| Section | Particulars | Rule/Form | Particulars |
|---------|---|-----------|--|
| 109 | Constitution of Appellate Tribunal & Benches there of | 110 | Appeal to Appellate Tribunal |
| 110 | President & Members of Appellate Tribunal. | 111 | Application to Appellate Tribunal |
| 111 | Procedure before Appellate Tribunal | 112 | Production of Additional evidence before Appellate Authority or Appellate Tribunal |
| 112 | Appeals to Appellate Tribunal | 113 | Order of AA or AT |
| 113 | Orders of Appellate Tribunal | APL-05 | Appeal to Appellate Tribunal |
| 114 | Financial & Admn. Powers to President | APL-06 | Cross objections before Appellate Tribunal |
| 115 | Interest on refund of amount paid for admission of appeal | APL-07 | Application to Appellate Tribunal under Section 112(3). |
| 116 | Appearance by Auth. Representative | | |

Citations relating to Appellate Tribunal

Torque Pharmaceuticals (P) Ltd. & Others Vs. UOI & Others – Allahabad High Court – 09-02-2021

Vision India Services Vs. UOI – Allahabad High Court 18-10-2021

Rajasthan Bar Federation Vs. UOI – Rajasthan High Court – 16-10-2019

V. Vasanth Kumar Vs. UOI – Madras High Court – 06-08-2018

Oudh Bar Association Vs. UOI – Allahabad High Court – 31-05-2019

Kay Pan Fragrance (P) Ltd. Vs. State of UP – Allahabad High Court – 17-07-2019

Jai Baba Amarnath Industries Vs. State of UP – Allahabad High Court – 08-01-2020 & 16-01-2020.

Revenue Bar Association Vs. UOI – Madras High Court – 17-08-2020

Appeal to Appellate Tribunal

Who can file appeal before Appellate Authority:

- Any person aggrieved by any decision / order passed under Section 107 or 108
- Commissioner on behalf of Department
- A T may not admit appeal below Rs. 50,000/-

Time limit for filing appeal

- Any person – within three months from the date of service of order
- Commissioner – within six months from the date of passing of order
- Three month condonation is available to both – on sufficient ground

Appeal to Appellate Tribunal

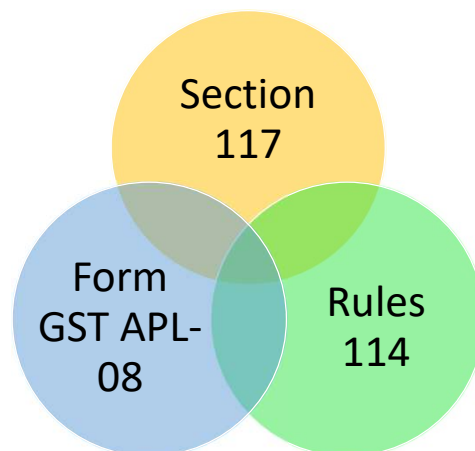
Pre – deposit:

- 100% of undisputed Tax, Interest, Penalty, Fine, Fee & Etc.
- 30% of Disputed Tax – Max Rs. 50.00 Cr.
- Upon paying the above amounts, the balance is stayed automatically

Memorandum of Cross Objections

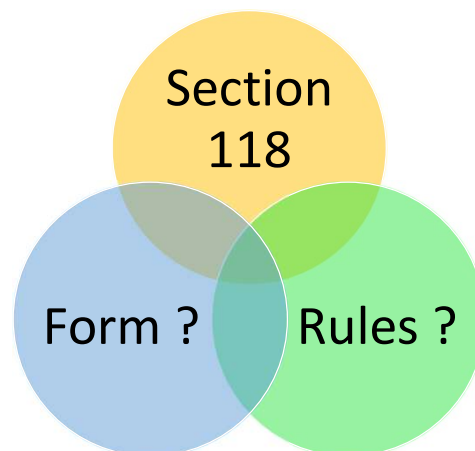
- Issue of Notice to other side
- Memorandum of Cross Objections to be filed with in 45 days
- Further 45 days condonation – on sufficient cause.

Appeal to High Court



| Who can file appeal before HC | Time Limit to file | Admission by HC: | Bench for GST Matters in HC | Form |
|--|---|---|--|---|
| <ul style="list-style-type: none"> Any person aggrieved by the orders of State Bench or State Bench of Appellate Tribunal | <ul style="list-style-type: none"> 180 days from receipt of Tribunal Orders Condonation – Sufficient Cause – HC empowered | <ul style="list-style-type: none"> Involvement of substantial issue of Law | <ul style="list-style-type: none"> Bench of not less than two Judges Judgment basing on the opinion of Majority of Judges. | <ul style="list-style-type: none"> Form GST APL - 08 |

Appeal to Supreme Court



Who can file appeal before Supreme Court

- Any person aggrieved by order of National Bench or Regional Bench of Tribunal
- Any person aggrieved by order of High Court U/s. 117

Rules & Forms

- Civil Procedure Code, 1908

Effecting SC Judgement:

- Judgment of HC is varied or reversed, SC judgement has to be given effect by either side on the basis of certified copy of judgment

**THANK YOU FOR
YOUR ATTENTION!**

ANY QUESTIONS ?