

Litigation Course on GST Season-2

Appealable Orders

A A P & CO.

Ashu Dalmia



Constituent of GST Ecosystem

Cycle of GST Activities

Registration

Levy

ITC

Documents

Time of
Supply

Valuation

Returns

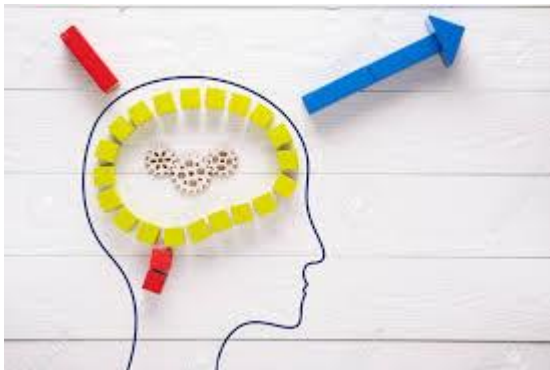
Movement
of Goods

Flow of Departmental Activities

Transaction/Movement of
Goods/Storage of
Goods/Return filing
of Not filing

Enquiry/Investigation
/SCN by dept.

Decision/Action by
Authority



Accept the
decision/Don't
Accept the decision

Course of Action if
don't accept the
decision

In case uncertainty before undertaking transaction

AAR & AAAR

Possible Scenario of Decision by GST Authorities

Registration

Scrutiny of Returns

Refund

Demand orders

ITC Blocking

Bank Account
Attachment

Inspection

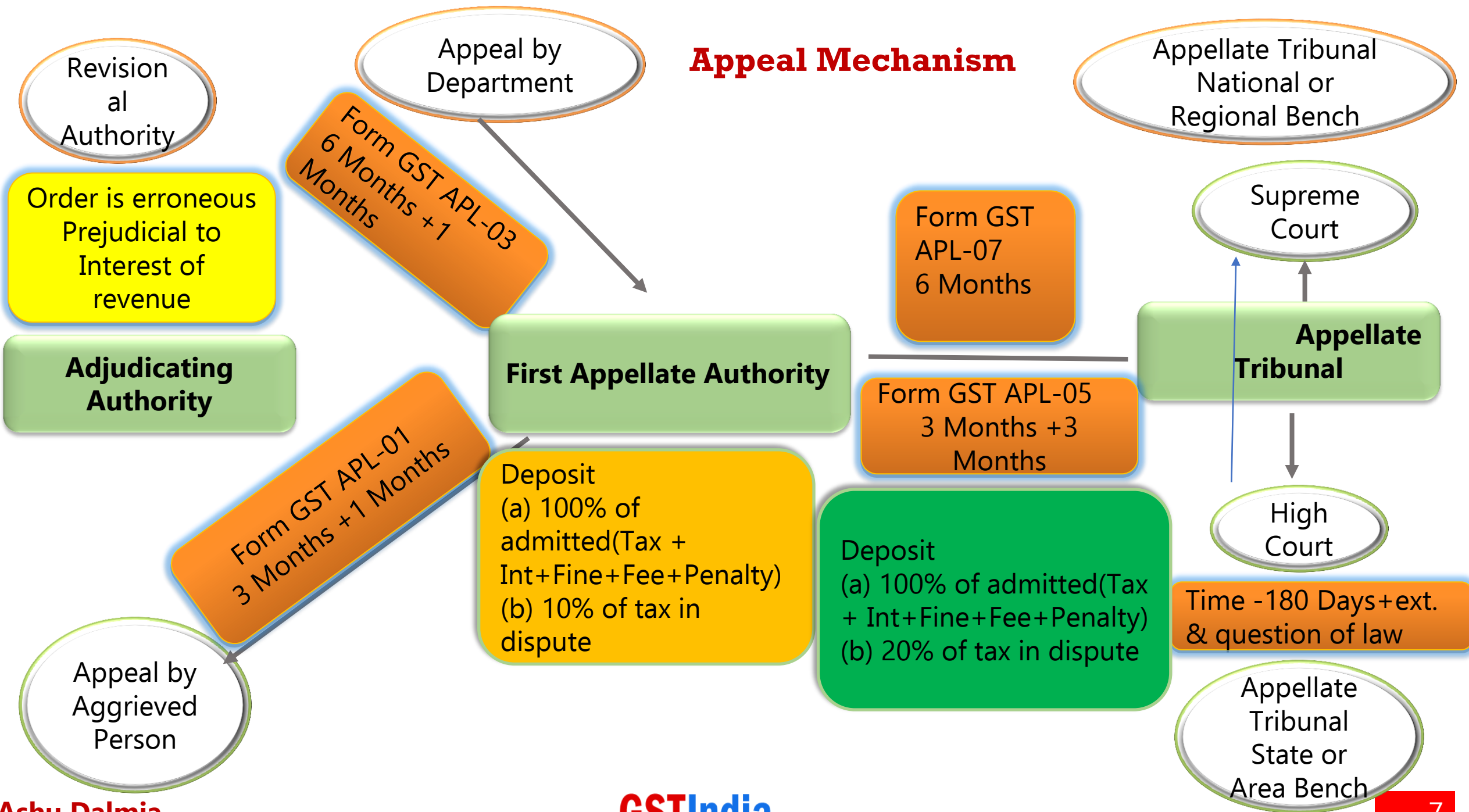
Movement of Goods

Search and Seizure

GST Practitioner

Others

Appeal Mechanism



Appeal to first Authority

Section 107: Appeals to Appellate Authority

(1) Any person aggrieved by 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** 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.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, **confirming, modifying or annulling the decision or order appealed against but shall not refer the case back** to the adjudicating authority that passed the said decision or order:

Restriction on Appeal

Section 120: Appeal not to be filed in certain cases

(1) The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions **fixing such monetary limits**, as it may deem fit, for the purposes of **regulating the filing of appeal or application by the officer** of the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it **shall not preclude such officer** of the central tax **from filing appeal or application in any other case involving the same or similar issues or questions of law**.

(3) Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), **no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application**.

Monetary Limits-Appeal-ST & Excise

Order-Instruction - Customs
F. No. 390/Misc/116/2017-JC
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes & Customs (Judicial Cell)

'B' Wing, 4th Floor, HUDCO VISHALA Building
Bhikaji Cama Place, R. K. Puram, New Delhi-66

Date - 22.08.2019

INSTRUCTION

<i>Appellate Forum</i>	<i>Monetary Limit</i>
<i>CESTAT</i>	<i>₹ 50,00,000/-</i>
<i>High Courts</i>	<i>₹ 1,00,00,000/-</i>
<i>Supreme Court</i>	<i>₹ 2,00,00,000/-</i>

Restriction on Appeal

Section 121: Non appealable decisions and orders..

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of central tax if such decision taken or order passed relates to any one or more of the following matters, namely:

- (a) an order of the Commissioner or other authority empowered to direct **transfer of proceedings from one officer to another officer**; or
- (b) an order pertaining to the **seizure or retention of books of account, register and other documents**; or
- (c) an order sanctioning **prosecution** under this Act; or
- (d) an order passed under **section 80**.

Discussion on few Decisions/Actions/orders of GST Authorities

Provisional Attachment

Section 83: Provisional attachment to protect revenue in certain cases.

(1) Where during the pendency of any proceedings under

- section 62 or
- section 63 or
- section 64 or
- section 67 or
- section 73 or
- section 74,

the **Commissioner is of the opinion** that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, **by order in writing attach provisionally any property, including bank account, belonging to the taxable person** in such manner as may be prescribed.

(2) Every such provisional attachment shall **cease to have effect after the expiry of a period of one year** from the date of the order made under sub-section (1).

Section 62: Assessment of non-filers of returns.

(1) Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered person fails to furnish the return under section 39 or section 45, even after the service of a notice under section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-section (1), the said assessment order shall be deemed to have been withdrawn but the liability for payment of interest under sub-section (1) of section 50 or for payment of late fee under section 47 shall continue.

Section 63: Assessment of unregistered persons.

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates:

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard.

Section 64: Summary assessment in certain special cases.

- (1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional Commissioner or Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so may adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax and any other amount due under this section.

- (1) On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in section 73 or section 74.

Section 67: Power of inspection, search and seizure.

- (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that—
- (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under this Act or has indulged in contravention of any of the provisions of this Act or the rules made thereunder to evade tax under this Act; or
 - (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

Section 67: Power of inspection, search and seizure.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents or books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any officer authorised by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

High Court Observations

The High Court observed that even for the purpose of section 67, the satisfaction has to be of the proper officer, not below the rank of Joint Commissioner. If the proper officer not below the rank of Joint Commissioner has reasons to believe that a taxable person has indulged in contravention of any of the provisions of the Act or the rules, then in such circumstances, he may authorize in writing any other officer to carry out the inspection, search and seizure.

The High Court, on analysis of section 83, observed that the said section makes it clear that it is the Commissioner's opinion which is relevant. The Legislature has thought fit to confer this power upon the Commissioner.

High Court held that the statutory requirement of 'reasonable belief' is to safeguard the citizen from vexatious proceedings. 'Belief' is a mental operation of accepting a fact as true, so without any fact, no belief can be formed. It is not required that the Authority is to state reasons for its belief. But if it is challenged that he had no reasons to believe, in that case, he must disclose the materials upon which belief was formed.

High Court Observations

- The power under Section 83 of the Act for provisional attachment should be exercised only if there is sufficient material on record to justify the satisfaction that the assessee is about to dispose of wholly or any part of his / her property with a view to thwarting the ultimate collection of demand and in order to achieve the said objective, the attachment should be of the properties and to that extent, it is required to achieve this objective.
- The High Court held that the power conferred upon the authority under Section 83 of the Act for provisional attachment could be termed as a very drastic and far-reaching power. Such power should be used sparingly and only on substantive weight grounds and reasons. This power should neither be used as a tool to harass the assessee nor should it be used in a manner which may have an irreversible detrimental effect on the business of the assessee.
- The High Court further held that the attachment of bank account and trading assets should be resorted to only as a last resort or measure. The provisional attachment under section 83 of the Act should not be equated with the attachment in the course of the necessary proceedings.

High Court Decision

The High Court set aside

- Order of provisional attachment of the stock of goods
- Provisional attachment of the bank account
- Blockage of the input tax credit
- Assessment order

Registration

1. FORM GST REG - 05: Order of Rejection of Application for Registration / Amendment / Cancellation: - Rule 9(4)

- ✓ Where no reply is furnished by the applicant in response to the notice issued for registration found to be deficient, either in terms of any information or any document required to be furnished or where the proper officer requires any clarification or where the proper officer is not satisfied with the clarification, information or documents furnished.
- ✓ He shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in **FORM GST REG - 05**.

Some Other orders

Registration

FORM GST REG – 12: Order of Grant of Temporary Registration/ Suo Moto Registration: - Rule 16(1)

Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in **FORM GST REG - 12**

FORM GST REG - 15: - Order of Amendment of registration: - Rule 19(1)

- ✓ Where there is any change in any of the particulars furnished in the application for registration in **FORM GST REG - 01** or **FORM GST REG - 07** or **FORM GST REG - 09** or **FORM GST REG - 10** or for UIN in **FORM GST REG - 13**, either at the time of obtaining registration or UIN or as amended from time to time.
- ✓ The proper officer shall, after due verification, approve the amendment within a period of fifteen working days from the date of the receipt of the application in **FORM GST REG - 14** and issue an order in **FORM GST REG - 15** electronically and such amendment shall take effect from the date of the occurrence of the event warranting such amendment.

Registration

FORM GST REG - 19: - Order for Cancellation of Registration: - Rule 22(3)

- ✓ Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled.
- ✓ The proper officer shall issue an order in FORM GST REG - 19, within a period of 30 days from the date of application submitted for cancellation of registration or, the date of the reply to the show cause issued in FORM GST REG – 17, cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing him to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section (5) of section 29.

Some Other orders

Refund

FORM GST RFD - 04: - Provisional Refund Order: - Rule 91(2)

- ✓ The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being satisfied that the amount claimed as provisional refund, shall make an order in **FORM GST RFD - 04**, sanctioning the amount of refund due to the said applicant on a provisional basis within a **period not exceeding seven days** from the date of the acknowledgement.
- ✓ Provided that the order issued in **FORM GST RFD - 04** shall not be required to be revalidated by the proper officer.

Some Other orders

Refund

FORM GST RFD - 05: - Payment Order: - Rule 91(3), 92(4), 92(5) & 94:

- ✓ The proper officer shall issue a payment order in **FORM GST RFD-05** for the amount of provisional refund sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice.
- ✓ Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (2) is payable to the applicant under sub-section (8) of section 54, he shall make an order in **FORM GST RFD-06** and issue a payment order in **FORM GST RFD-05** for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund on the basis of a consolidated payment advice.
- ✓ Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (2) is not payable to the applicant under sub-section (8) of section 54, he shall make an order in **FORM GST RFD-06** and issue a payment order in **FORM GST RFD - 05**, for the amount of refund to be credited to the Consumer Welfare Fund.
- ✓ Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment order in **FORM GST RFD - 05**, the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

Some Other orders

Refund

FORM GST RFD - 06: - Refund Sanction / Rejection Order: - Rule 92(1), 92(3), 92(4), 92(5) & 96(7)

- ✓ Where, the proper officer is satisfied that a refund on provisional basis is due and payable to the applicant, he shall make an order in **FORM GST RFD – 06**, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable.
- ✓ Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in **FORM GST RFD-08** to the applicant, requiring him to furnish a reply in **FORM GST RFD-09** within a period of fifteen days of the receipt of such notice and after considering the reply, make an order in **FORM GST RFD-06** sanctioning the amount of refund in whole or part, or rejecting the said refund claim.
- ✓ Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (2) is payable to the applicant under sub-section (8) of section 54, he shall make an order in **FORM GST RFD-06**.

Some Other orders

Refund

FORM GST RFD - 06: - Refund Sanction / Rejection Order: - Rule 92(1), 92(3), 92(4), 92(5) & 96(7)

- ✓ Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (2) is not payable to the applicant under sub-section (8) of section 54, he shall make an order in **FORM GST RFD-06** and issue a payment order in **FORM GST RFD - 05**, for the amount of refund to be credited to the Consumer Welfare Fund.

Some Other orders

Refund

FORM GST RFD - 07: - Order for Complete adjustment of sanctioned Refund: - Rule 92(1), 92(2) & 96(6)

- ✓ Where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment shall be issued in **Part A of FORM GST RFD - 07**.
- ✓ Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under the provisions of sub-section (10) or, as the case may be, sub-section (11) of section 54, he shall pass an order in **Part B of FORM GST RFD - 07** informing him the reasons for withholding of such refund.
- ✓ Upon transmission of the intimation under sub-rule (5), the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in **Part B of FORM GST RFD-07**.

FORM GST ASMT – 04: - Order of Provisional Assessment: - Rule 98(3)

- ✓ The proper officer shall issue an order allowing the payment of tax on a provisional basis indicating the value or the rate or both on the basis of which the assessment is to be allowed on a provisional basis and the amount for which the bond is to be executed and security to be furnished not exceeding twenty-five per cent. of the amount covered under the bond.

FORM GST ASMT – 07: - Final Assessment Order: - Rule 98(5)

- ✓ The proper officer shall issue a notice in **FORM GST ASMT-06**, calling for information and records required for finalization of assessment under sub-section (3) of section 60 and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in **FORM GST ASMT-07**.

FORM GST ASMT – 09: - Order for release of security or rejecting the application: - Rule 98(7)

- ✓ The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in **FORM GST ASMT-09** within a period of **seven working days** from the date of the receipt of the application under sub-rule (6).

FORM GST ASMT-12: - Order of acceptance of reply against the notice issued Scrutiny of returns: - Rule 99(3)

- ✓ Where the explanation furnished by the registered person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform him accordingly in **FORM GST ASMT-12**.

FORM GST ASMT – 13: - Assessment order of non-filers of returns: - Rule 100(1)

- ✓ The Assessment order of non-filers of returns shall be issued in **FORM GST ASMT-13** and a summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

FORM GST ASMT – 15: - Assessment order for Assessment of unregistered persons: - Rule 100(2)

- ✓ The proper officer shall issue a notice to an unregistered taxable person in **FORM GST ASMT-14** containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof electronically in **FORM GST DRC-01**, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in **FORM GST ASMT-15** and summary thereof shall be uploaded electronically in **FORM GST DRC-07**.

Some Other orders

FORM GST ASMT – 16: - Assessment order Summary assessment in certain special cases u/s 64: - Rule 100(3)

The order of assessment shall be issued in **FORM GST ASMT-16** and a summary of the order shall be uploaded electronically in **FORM GST DRC-07**.

FORM GST EWB – 06: - Order for permitting / rejecting application for unblocking of the facility for generation of EWB: - Rule 138E

- ✓ No person (including a consignor, consignee, transporter, an e-commerce operator or a courier agency) shall be allowed to furnish the information in PART A of FORM GST EWB-01 in respect of a registered person, whether as a supplier or a recipient, who;
 - a) a person paying tax under section 10 has not furnished the statement in FORM **GST CMP-08** for two consecutive quarters,
 - b) a person other than a person specified in clause (a), has not furnished the returns for a consecutive period of two months.

FORM GST INS - 02: - Order of Seizure: - Rule 139(2)

- ✓ Where any goods, documents, books or things are liable for seizure under sub-section (2) of section 67, the proper officer or an authorized officer shall make an order of seizure in **FORM GST INS - 02**.

FORM GST INS - 03: - Order of Prohibition: - Rule 139(4)

- ✓ The proper officer or the authorized officer may serve on the owner or the custodian of the goods, where it is not practicable to seize any such goods, an order of prohibition in **FORM GST INS - 03** that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.

FORM GST INS - 05: - Order of Release of Goods / Things of Perishable or Hazardous Nature: - Rule 141(1)

- ✓ Where the goods or things seized are of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such goods or things or the amount of tax, interest and penalty that is or may become payable by the taxable person, whichever is lower.
- ✓ Such goods or, things shall be released, by an order in FORM GST INS-05, on proof of payment.

Some Other orders

FORM GST DRC - 07: - Summary of the order: - Rule 100(1), 100(2), 100(3) & 142(5)

- ✓ The order of assessment made under sub-section (1) of section 62 shall be issued in FORM GST ASMT-13 and a summary thereof shall be uploaded electronically in **FORM GST DRC-07**.
- ✓ The proper officer shall issue a notice to a taxable person in accordance with the provisions of section 63 containing the grounds on which the assessment is proposed to be made on best judgment basis and shall also serve a summary thereof, and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT-15 and summary thereof shall be uploaded electronically in **FORM GST DRC-07**.
- ✓ The order of assessment under sub-section (1) of section 64 shall be issued in FORM GST ASMT-16 and a summary of the order shall be uploaded electronically in **FORM GST DRC-07**.
- ✓ A summary of the order issued under section 52 or section 62 or section 63 or section 64 or section 73 or section 74 or section 75 or section 76 or section 122 or section 123 or section 124 or section 125 or section 127 or section 129 or section 130 shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

FORM GST DRC - 07A: - Summary of the order creating demand under existing laws: - Rule 142A (1)

- ✓ A summary of order issued under any of the existing laws creating demand of tax, interest, penalty, fee or any other dues which becomes recoverable consequent to proceedings launched under the existing law before, on or after the appointed day shall, unless recovered under that law, be recovered under the Act and may be uploaded in **FORM GST DRC - 07A**.

FORM GST DRC – 08: - Summary of Rectification / Withdrawal Order: - Rule 142(7)

- ✓ Where a rectification of the order has been passed in accordance with the provisions of section 161 or where an order uploaded on the system has been withdrawn, a summary of the rectification order or of the withdrawal order shall be uploaded electronically by the proper officer in **FORM GST DRC - 08**.

FORM GST DRC - 08A: - Amendment/Modification of summary of the order creating demand under existing laws: - Rule 142A (2)

- ✓ Where the demand of an order uploaded under sub-rule (1) is rectified or modified or quashed in any proceedings, including in appeal, review or revision, or the recovery is made under the existing laws, a summary thereof shall be uploaded on the common portal in **FORM GST DRC-08A**.

FORM GST DRC – 09: - Order for recovery of tax through specified officer u/s 79: - Rule 143

- ✓ Where any amount payable by a person to the Government is not paid, the proper officer may require, in **FORM GST DRC-09**, a specified officer to deduct the amount from any money owing to such defaulter in accordance with the provisions of clause (a) of sub-section (1) of section 79.

Some Other orders

FORM GST DRC – 21: - Order for acceptance / rejection of application for deferred payment / payment in instalments: - Rule 158(2)

- ✓ The Commissioner may issue an order in **FORM GST DRC - 21** allowing the taxable person further time to make payment and / or to pay the amount in such monthly installments, not exceeding twenty-four, as he may deem fit.

Some Other orders

FORM GST CPD - 02: - Order for rejection / allowance of compounding of offence: - Rule 162(3)

- ✓ The Commissioner, after taking into account the contents of the said application, may, by order in **FORM GST CPD - 02**, on being satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case, allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within ninety days of the receipt of the application.

Some Other orders

FORM GST MOV – 02: - Order for physical verification / inspection:

- ✓ Order for physical inspection of vehicle and to station (stop) the vehicle for the said purpose. Within 24 hours of issuance of **Form GST MOV-02**.

Some Other orders

FORM GST MOV – 05: - Release order

- ✓ Release order will be passed if no discrepancy is found during inspection; otherwise it will be issued after Form GST MOV-08.

Some Other orders

FORM GST MOV – 06: - Detention order

- ✓ If discrepancy is found, then Detention order will be passed under Form GST MOV-06.

FORM GST MOV – 11: - Order of confiscation of goods & conveyance

- ✓ Proper officer will issue a confiscation order of goods/ conveyance. After Form GST MOV-11, Form GST MOV-09 shall be withdrawn. Owner can get the goods released within a period of three months (maximum) from issuance of Form GST MOV-11 to pay tax, penalty & fine in lieu of confiscation.

Thank you

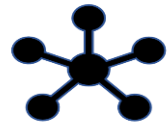
AAP &
CO.



ashu.dalmia@ada.org.in



+91-11-22466591, 45665691, 22422707
+91-9810893243



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