

Appeals under revised GST - Comparative analysis

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GST being a revolutionary taxation reform in indirect taxation and being introduced for the first time, it is obvious that assesseees will need time to understand and adapt to its compliance. Being a new taxation regime, interpretational issues are bound to crop up and it is very essential that the appellate procedures that are incorporated in the Final GST Law are simple and more importantly justifiable so that assessee is not deprived of its fundamental right to challenge the decision made against him. The present article is an attempt to make comparison of the appeal provisions incorporated in the revised draft with the old draft and make conclusions in context of laws presently in force.

The substantial change that has been made in the Revised GST Law is that instead of mentioning different provisions for CGST and SGST separately, the provisions have been consolidated so that they are easy to refer and understand. Moreover, in the earlier draft GST Law, there was disparity in the provisions of CGST and SGST Laws which has now been aligned. We discuss the significant changes made as follows:-

- Distinction in time limit for filing appeal to First Appellate Authority/Tribunal by assessee and revenue department:-** Under Old GST Law, the appeal to the first appellate authority/tribunal was required to be filed by assessee or revenue department within a period of three months from the date of communication of order. Now, under the revised GST Law, this time period is specified as three months from communication of order for assessee while for GST officer filing appeal, this time limit is six months from date of communication of order to file appeal by the Commissioner/Committee of Commissioners. **The enhanced time limit given to revenue department will encourage their casual attitude in filing appeal.**
- Mandatory pre-deposit provisions:-** There is material departure in mandatory pre-deposit provisions as under the earlier draft GST Law, different provisions were there under CGST and SGST Laws but this disparity is removed in the revised GST Law. The provisions of the old GST Law are tabulated as follows:-

Appellate Authority	CGST Law	SGST Law
First Appellate Authority and Second Appellate Authority being Tribunal	10% of the amount in dispute arising from the said order. Amount in dispute means amount determined including amount of fee or penalty levied. If interest is determined by order, interest is also included.	Amount of tax, interest, fine, penalty admitted by assessee in full is to be deposited. Apart from admitted liability, a sum equal to 10% of remaining amount in dispute. Amount in dispute means amount determined including amount of fee or penalty levied. If interest is determined by order, interest is also included.

		<p>Departmental authorities also have right to apply for ordering higher pre-deposit, upto maximum 50% of the amount in dispute if the case is considered as 'serious case'.</p> <p>Serious case means case involving disputed tax liability of Rs. 25 Crores or more and department believes it is good case for them.</p>
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The revised GST Law proposes the following components of mandatory pre-deposit for filing appeal to first appellate authority/tribunal :-

- (a) Amount of tax, interest, fine, fee and penalty arising from the impugned order as admitted by assessee to be paid in full.
- (b) $\text{A}^{\text{}}$ 10% of the remaining amount of tax in dispute arising from the said order in relation to which appeal has been filed.

Furthermore, proviso states that nothing shall affect the right of departmental authorities to apply to the First Appellate Authority or Tribunal for ordering a higher amount of pre-deposit not exceeding twenty five per cent of the amount of tax in dispute in case considered by the Commissioner of GST as a 'serious case'.

Moreover, explanation clarifies the meaning of 'serious case' as case in which an order has been passed under section 67 involving a disputed tax liability of not less than Rs. 25 Crores.

It is worth appreciating that the section 109 (9)(ii) specifying mandatory pre-deposit for filing appeal to appellate tribunal clarifies that the 10% of the remaining tax in dispute is to be paid in addition to amount deposited as pre-deposit for filing appeal to first appellate authority.

POINTS TO PONDER:-

The removal of anomaly in the provisions of mandatory pre-deposit under CGST and SGST Laws is highly welcomed but mere change in the meaning of 'serious case' was not expected by the assessees. If we observe the mandatory pre-deposit provisions presently in force in Central Laws, we find that there is a ceiling of Rs. 10 Crores but no such ceiling is there in the revised GST Law. Moreover, discretionary power has been granted to departmental authorities for ordering higher pre-deposit in cases considered as 'serious case' by the Commissioner. This provision was expected to be deleted in the Revised GST Law but this has not been done which is great disappointment for assessees. The Revised GST Law has only reduced the extent of pre-deposit from 50% of the amount in dispute to 25% of the amount of tax in dispute. The basic purpose of introducing mandatory pre-deposit provisions was to reduce the burden of appellate authorities and reduce the wastage of time in deciding stay applications. However, incorporating discretionary power to order higher pre-deposit will again lead to increasing the burden of appellate tribunals in deciding the quantum of pre-deposit.

On the other hand, the amendment regarding quantum of pre-deposit to be 10% of tax in dispute rather than amount in dispute is welcomed as the meaning of term 'amount in dispute' was wider and included penalty and fine also. However, **in the revised GST Law, 10% is to be paid only of tax in dispute which is appreciated.**

3. Mandatory pre-deposit to be applicable even to cross-objections filed to the tribunal:- Under Old GST Law, although there was provision for filing cross objections within 45 days of receipt of notice of filing of appeal to the Tribunal by the respondent and it was mentioned that such cross objections will be disposed of as if it were an appeal presented to the tribunal but there was no specific provision that provisions of mandatory pre-deposit would apply even in case of filing cross

objections. However, **under the revised GST Law, the provisions of mandatory pre-deposit have been applied mutatis mutandis to cross objections filed by respondent** . This provision will raise many doubts regarding computation of quantum of mandatory pre-deposit for cross objections filed by the respondent.

4. No power of remand to first appellate authority:- If the old GST Law is studied, it was found that the first appellate authority was empowered to pass such order as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against. However, under the Revised GST Law, it is specified that the first appellate authority shall pass such order as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against **but shall not refer the case back to the authority that passed the said decision or order** . Presently, there are divergent decisions on the issue whether the first appellate authority can remand the case back to the adjudicating authority or not but this confusion is ended in the GST regime. However, no logical reason appears to deny the first appellate authority to remand the case as at times, it is not possible to verify certain facts by the first appellate authority and it is necessary that it has power to remand the case.

5. Concept of direct appeal to tribunal in case of orders passed by Commissioner dispensed with :- Presently, under Central Laws, appeal against the orders passed by rank of Commissioner is directly appealed to the Tribunal so as to reduce the appellate stage in cases involving huge taxes. Moreover, assessee is also benefitted as he is not required to pay mandatory pre-deposit of first appellate authority. However, neither the old GST law nor the revised GST Law provides exception to the filing of appeal in case of orders passed by the rank of Commissioners. This will lead to orders involving huge tax amounts also appealable to first appellate authority thereby hindering speedy disposal of litigation.

The changes made in the appellate mechanism in Revised GST Law do not support the motto of 'Simplified Tax Reform' and rather tend to defeat the objective of reduced litigation in GST regime. Well, the professionals and lawyers can foresee their 'acche din' after implementation of GST.

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