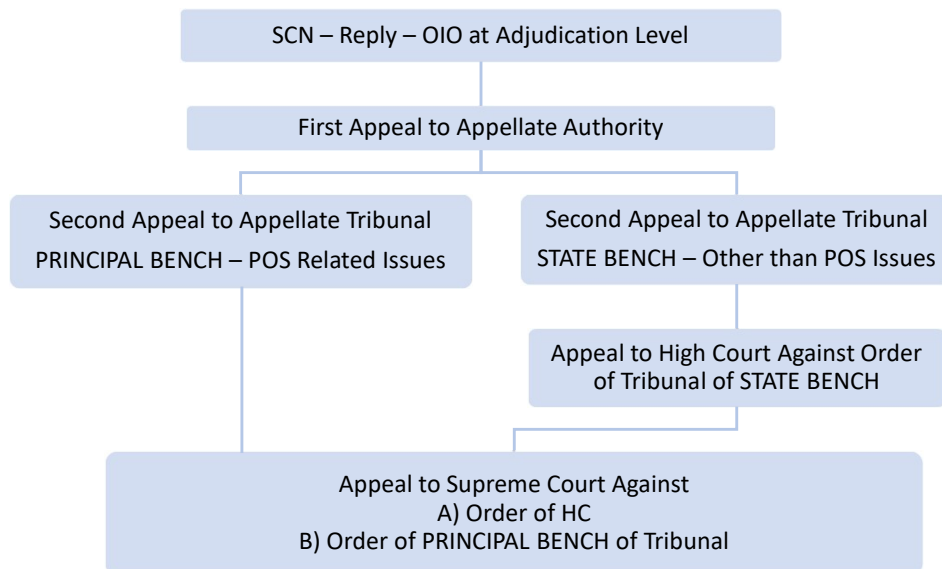


# How to tackle SCNs issued Under GST How to Handle Appeals Under GST Effectively

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NAVSARI BRANCH OF WIRC OF ICAI

## Adjudication and Appeals



# Assessment and Audit

	Section	
ASSESSMENT	59	Self-assessment
	60	Provisional assessment
	61	<b>Scrutiny of returns</b>
	62	Assessment of non-filers of returns [within 5 years]
	63	Assessment of unregistered persons [within 5 years]
	64	Summary assessment in certain special cases [protective assessment]
AUDIT	65	<b>Audit by tax authorities</b>
	66	Special audit [by Chartered or Cost Accountant Nominated by Commissioner]

## DEMAND AND RECOVERY Section 73 v/s 74

	Section 73	Section 74
To be Invoked	<b>OTHER THAN for</b> Fraud OR wilful mis-statement OR Suppression of Facts	<b>FOR</b> Fraud OR wilful-mis statement OR Suppression of Facts
Notice To be issued	Within 33 Months from the due date of Annual Return [3 months prior]	Within 54 Months from the due date of Annual Return [6 months prior]
Statement may be served	For continuing period, Statement can be served instead of Notice	
Reply to SCN		
Passing or Order Max by	Within 3 Years from the due date of Annual Return	Within 5 Years from the due date of Annual Return

# DEMAND AND RECOVERY - Time barred Limitation

After Extended via NN 56-2023 CT Dated 28-12-2023

FY	Extended Due Date or Original Date of GSTR9	Section 73		Section 74	
		Notice Can be ISSUED Max by [at least 3M before order]	Order can be ISSUED Max by [3 Years from Due date of G9]	Notice Can be ISSUED Max by [at least 6M before order]	Order can be ISSUED Max by [5 Years from Due date of G9]
2017-18	5-Feb-20	30-Sep-23	31-Dec-23	5-Aug-24	5-Feb-25
2018-19	31-Dec-20	31-Jan-24	30-Apr-24	30-Jun-25	31-Dec-25
2019-20	31-Mar-21	31-May-24	31-Aug-24	30-Sep-25	31-Mar-26
2020-21	28-Feb-22	30-Nov-24	28-Feb-25	28-Aug-26	28-Feb-27
2021-22	31-Dec-22	30-Sep-25	31-Dec-25	30-Jun-27	31-Dec-27
2022-23	31-Dec-23	30-Sep-26	31-Dec-26	30-Jun-28	31-Dec-28

\*In case Tax has been collected but not paid, No time limit u/s 76

\*\* In case of erroneous refund, date of 3 / 5 years to be counted from date of Refund Order

\*\*\* When any Notice or Order Stayed by Court or Tribunal, such period will be excluded

## DEMAND AND RECOVERY Penal Provisions

If Tax and Interest Paid	Form Issued	Section 73	Section 74
<b>Voluntary Before SERVICE of SCN*</b>	DRC-01A (Intimation)	NIL	15%
<b>Within 30 days of ISSUING SCN**</b>	DRC-01 (SCN)	NIL	25%
<b>While Issuing Order in DRC-07</b>		10% of Tax OR 10000 Whichever is Higher	100%
<b>If Paid Within 30 days of COMMUNICATING of Order</b>		10% of Tax OR 10000	50%
<b>If Paid After 30 days of COMMUNICATING of Order</b>		Whichever is Higher	100%

## DEMAND AND RECOVERY

### Monetary Limit to Adjudicate the Notices U/s 73 / 74

[Circular 31-2018]

Officer of Central Tax	Monetary Limit CGST + SGST + IGST
Superintendent of Central Tax	Up to Rs 20 Lakhs
Deputy or Assistant Commissioner of Central Tax	20 Lakhs to 2 Crores
Additional or Joint Commissioner of Central Tax	Above 2 Crore Rupee
*An officer of central tax may exercise the powers any other officer of central tax who is subordinate to him	

## DEMAND AND RECOVERY

### Forms and Process Flow

Form	Particulars of the Form	By
DRC-01A PartA	Intimation of tax ascertained as being payable under section 73(5)/74(5) [Pre-notice consultations] – Optional for Officer	Officer
DRC-01A PartB	Reply to the communication for payment before issue of Show Cause Notice	Tax Payer
DRC-01	Show Cause Notice for Tax, Interest and Penalty	Officer
DRC-02	Statement for "Periodical Demand" for Tax, Interest and Penalty	Officer
DRC-03	Intimation of payment made voluntarily or made against the show cause notice (SCN) or statement	Tax Payer
DRC-04	Acknowledgement of acceptance of payment made voluntarily	Officer
DRC-05	Intimation of conclusion of proceedings	Officer
DRC-06	Reply to the Show Cause Notice	Tax Payer
DRC-07	Summary of Order	Officer
DRC-08	Rectification of Order / Withdrawal of Order	Officer

## Miscellaneous, BUT IMPORTANT (Safe-Guards)!

- Opportunity of being heard is granted only when request is made in Writing / Or before passing any adverse order [Sec. 75(4)]
- Max 3 adjournment for OBH [Sec. 75(4)]
- Order Should be “Speaking Order” [Sec. 75(6)]
- No New Grounds after issuance of SCN. Order can’t travel beyond the Notice [Grounds as well as Amount] [Sec. 75(7)]
- Adjudicating process is deemed to be completed if order not issued within time [Sec. 75(10)]
- If anything is self-assessed in return, direct recovery [Sec. 75(12)] [Instruction 01-2022 prescribes, one opportunity to be given]
- If Penalty imposed under 73/74, no other penalty (eg. under 122 / 125) [Sec. 75(13)]
- Max Interest @18% WEF 01-07-2017
- Modes of Delivery (Service of Notice) Section 169 vis-à-vis Instruction 04/2023

## Miscellaneous, BUT IMPORTANT (Safe-Guards)!

- If Fraud / Wilful misstatement / Suppression Not found, adjudication proceedings will be automatically converted to Section 73. [Sec. 75(2)]
- REPLY to Time barred / Bad Notices in Technical grounds will prove it RIGHT. Question the Notice before Answering it [Sec. 160(2)]
  - Challenging Extended period u/s 168A
  - Challenging the SCN if Mode of Delivery is wrong / Signature Not found
  - Challenging the SCN if Only DRC-01 issued without any Notice [Rule 142(1)]
- Burden of Proof for “Eligibility of ITC” is on “Tax Payer” [Sec. 155]
- Rectification of Errors apparent on the Face of Order can be done, within 3 months [Sec. 161]
- PH Cant be before submitting the reply – H T Media Ltd. V Union Of India [2023] 153 taxmann.com 339 (Delhi)
- 30 Days minimum time between SCN and Order (Scheme suggest lower penalty if paid within 30 days)
- Notice to be dropped for already closed matter in past in ASMT-12 or DRC-05
- Provisional Attachment Notice during SCN? [Sec. 83]

## When to Celebrate the “Drop Order” after SCN?

- Commissioner can direct any officer to file appeal against original Order, within 6 months of original order [Sec. 107(2)]
- Revisional Authority May pass and order within 3 years from the date of original Order [Sec. 108]
- Proper Officer Can rectify any error which is apparent on the face of the record within 6 months from the date of Order [Sec. 161]

## Appeals Under GST: PART A: Law & Procedure

## Appeals to Appellate Authority – First Appeal [Sec. 107]

- Appeal can be filled against “Decision or Order” Passed by “Adjudicating Authority”
- “Any Person” – Who is aggrieved
- **Order** is must.
  - RFD-03 or MOV-03/04 is not an Order
- **Adjudicating Authority** Means Any authority to pass the order under the Act, BUT Does Not Include:
  - CBIC
  - Revisional Authority
  - AAR, AAAR, NAAAR
  - Appellate Authority
  - Appellate Tribunal
  - Authority of Anti Profiteering
- No Appeals can be filled against:
  - Transfer of proceedings to another officer
  - Seizure of books of accounts
  - Order of prosecution
  - Order of Payment in Instalments

## Time limit to file First Appeal [Sec. 107(1),(2),(4)]

- First appeal has to be filled within 3 months [From the date of **COMMUNICATION**]
- 3 months should be counted Month on month (And Not as 90 Days)
- 3 months should be calculated from the DATE OF COMMUNICATION of Order
- 1 Month can be condone for delay, if Appellate Authority satisfied that appellant was prevented from sufficient cause from presenting the appeal [Pleading + Evidence]
- Departmental Appeal (against their own order by Adjudicating Authority) can be filled within 6 months of the Order
- 1 Month Condonation is also available to Departmental Appeal
- What if one missed 3+1 Months?

## Service of Notice / Order [Sec. 169] vis-à-vis Instruction 04/2023

- Any Decision / Notice / Order / Summons etc. Can be served by any one of the following:
  - By Hand Delivery to Taxable Person / to his AR / to his manager / To his Advocate / employee
  - By Courier
  - By Registered Post / Speed Post / Courier with Acknowledge due
  - By Sending Email as provided on Registration
  - By Making it available on Portal
  - By Publishing it on Newspaper
  - By affixing Notice at his last known business place / residence
- Service of Notice can't be on WhatsApp
- Instruction 04-2023 Dated 23-11-2023 Strictly mandates Orders to be uploaded on GST Portal

## “Pre-Deposit” [Sec. 107(6)]

- “Pre-Deposit” vis-à-vis “10% of Disputed Tax”
- 100% of the Admitted Tax, Interest and Penalty
- **10% of Disputed Tax** & 0% of Interest & Penalty. [Max 25+25 Crore]
- Incase Penalty due to E-waybill breach [Sec. 129(3)], **25% of PENALTY** to be paid as Pre-Deposit – [Bond in MOV-08 Preferable]
- So called “Pre-Deposit” Can be paid via ITC, if the underlying Disputed demand can otherwise be paid via ITC. Eg:
  - Underlying Demand is for RCM – pre-deposit has to be paid in Cash
  - Underlying Demand is for erroneously refunded amount – pre-deposit has to be paid in cash
- Incase of Manual filling of appeal, Pre-deposit can also be paid via DRC-03
- Incase of payment made involuntarily during Pre-adjudication process – such DRC-03s can be used in pre-deposit
- Interest on refund of Pre-Deposit - @ 6%



## Appeal Mode: Online Vs Offline [Rule 108(3)]

- If Order Uploaded online, It has be filled Online. (No Physical Documents required, One may submit it voluntarily for their convenience)
- If Order passed manually, appeal can be filled manually
- Incase of Manual order, Self Certified Order to be submitted within 7 days
- Instruction No 04-2023 23.11.2023 - Now mandates officer to upload every order on the Portal

## Stay [Section 107(7)]

- Deemed Stay
- Inform Jurisdictional Authority, Anyway
- What if less than 10% of disputed Tax paid as Pre Deposit?
- What of APL-02 is not issued?

## Appeal (u/s 107) Vs Rectification (u/s 161)

- Proper Officer who has passed the order can rectify any error which is apparent on the face of the record
- Such rectification of the order can be done on either
  - On his own motion
  - Or where such error is brought to its notice within 3 months by affected person
- Such rectification can be done within 6 months from the date of original order
- Incase of pure clerical Or arithmetical error, rectification can be done even after 6 months

## OBH, Adjournments & Additional Grounds

- Opportunity of Being Heard – Personal Hearing
  - MUST be given by Appellate Authority
- Adjournment
  - Can be given if sufficient cause has been shown
  - Reason of such cause to be recorded
  - No adjournment can be given more than 3 times
- Additional Grounds during PH
  - Can be added other than already mentioned in “Grounds of appeal” Only if omission of that ground was not wilful or unreasonable
- Order
  - Order of the Appellate Authority should be in writing, and shall state the points of determination, the decision there on and reasons for such decision
  - AA Cant refer back the case to Adjudicating Authority
  - Wherever possible, appeal should be disposed off in 1 year

## Who Can be Authorised Representative? [Sec. 116]

- Relative of Tax payer
- Regular Employee
- Advocate
- Chartered Accountant
- Cost Accountant
- Company Secretary
- Retired Commercial Tax Officer of State or UT or Board who has worked for at least 2 years as Group-B Gazette Officer (Can appear only after 1 year of retirement)
- Authorised GSTP

# Appeal to be filled before

- STATE [Rule 109A of GujGST Rules]

Order Passed by	Appeal to be filled before
Joint Commissioner	Additional Commissioner
Deputy Commissioner	Joint Commissioner (Appeals)
Assistant Commissioner / State Tax Officer	Deputy Commissioner (Appeals)

- CENTER [Rule 109A of CGST Rules]

Order Passed by	Appeal to be filled before
Additional Commissioner / Joint Commissioner ( <b>Order Above 2 Crore</b> )	Commissioner (Appeals)
Deputy / Assistant Commissioner / Superintendent ( <b>Orders Up to 2 Crore</b> )	Any officer not below the Rank of Joint Commissioner (Appeals)

- Appeal Jurisdictional office for Ewaybill Related Appeals

# Appeals to Appellate Authority - Forms

Form	Particulars of the Form	By
APL01	Form to file appeal online [Along with Statement of facts and Grounds of appeal] [Appeal to Commissioner (A) or JC (A)]	Tax Payer
	Certified copy of order to be submitted within 7 days - Incase of Manual Order	Tax Payer
APL02	Final Ack of Appeal will be given [Indicating Appeal Number] Only after getting APL-02, appeal is said to be filled	Appellate Authority
APL03	Departmental Appeal	Officer appointed by Comm.
APL04	Summary of order clearly mentioning final amount of demand confirmed	Appellate Authority

## Miscellaneous, BUT IMPORTANT - Appeal

- Demand paid against Protest via DRC-03, Amount Appropriated and Drop order passed in DRC-05 illegally, How to file appeal?
- Writ V/s Appellate Remedy [Decision at SCN Stage]
- Defective appeal
  - Without Pre Deposit
  - Without verification
  - Not in prescribed form

## Appeals Under GST: PART B: Drafting & Pleading Approach

## Appeal SET Checklist - illustrative

- Cover letter
- Acknowledgement of APL-01
- Form APL-01
- Annexure to APL-01
- Application for condonation of delay
- Copy of Order [Self Certified Copy – Incase of Manual Order]
- Supporting Documents to “Annexure to APL-01”
- Copy of Challan of pre deposit
- Stay Application – Separate for Jurisdictional office

## Art of Drafting of Appeal

- Analysis of Issue with Client and Collection of further Details – COMPLETE FACTS
- Drafting
  - 75% for research 25% for drafting
  - In the Flow
  - Margin, Page numbering, Para numbering, Index if needed, Line spacing, on LH of Noticee, 3 sets properly tagged/stapled, Font, Justify
  - Language
  - Reply to every para – Alternate grounds – cover every issue – reference to law
  - Be specific, be firm but never hurt the ego
  - Don't use idioms and phrases
  - Annexures / Enclosures with Title and Index
- Accept / Deny Allegation OR Attack Question
- Cross Examination of third party / Cross examination of the Documents
- Detailed Reply / Detailed Drafting? Vs Apt and Concise!
- Don't Give Excess or unsolicited Information

## Drafting of Appeal - BODY – Annexure to APL-01

- Fact of the Case
  - Only Fact, No emotions
  - Clear, Concise, chronological
- Grounds of Appeal
  - Reject the demand / Attack the Question
  - Correct the facts
  - Multiple Grounds / Alternate plea / submission – separate from each other
  - Misunderstanding of Facts, misapplication of Law, Technical Ground
  - Case Laws - caution
  - Other standard grounds such as
    - Shifting of proceedings to 73 from 74
    - OBH Not given
    - Tax to be Calculated assuming Amount received is inclusive of Tax
    - Tax Neutrality Ground
    - Multiple penalty barred in law section 75(13)
    - Demand cant be imaginary, on Assumptions or Presumptions
- Prayer
  - Ask for each possible relief
  - Any other Relief as may be granted
- Condonation of delay [See Draft]

## Personal Hearing

- Compile short-notes / synopsis – prioritise the Grounds of Appeal
- Know the adjudicating / Appellate Authority
- LoA [Format]
- Speak softly
- Start with facts
- Appearance – Should be presentable, Dress Code
- Max 3 Adjournments – with reasons to be recorded
- Check Judgement already cited in appeal, if its overruled or so
- Sign PH Memo and keep a copy
- Skillset
  - Knowledge of the Concerned law
  - Knowledge of Evidence Law and Administrative Law
  - Communication Skills
  - Through knowledge of the Case laws

## Additional Evidences During Appeal [Rule 112]

- No Additional Evidences are allowed Before **Appellate Authority** which were not produced originally before **Adjudicating Authority** EXCEPT when
  - When Adjudicating Authority refused to admit the Evidence
  - Where appellant was prevented by sufficient cause from producing evidence which were called upon
  - Where appellant was prevented by sufficient cause from producing evidence which is relevant to any grounds of appeal
  - Where order has been passed without giving OBH
- If additional Evidences are produced, reasons to be recorded
- However, Appellate Authority can direct to produce the evidence / document to enable it to dispose the appeal

## Appeals Under GST: PART C: Walk-Through of Portal

Pre Deposit : 100 % of Admissible+ 10% of Disputed Amount

Amount Of Demand created and admitted					
Description	Central tax (₹)	State/ UT tax (₹)	Integrated tax (₹)	Cess (₹)	
Amount of demand created (A)	Tax/Cess	1602815	1602815	341	0
	Interest	1590344	1590344	338	0
	Penalty	160282	160282	10000	0
	Fees	0	0	0	0
	Other charges	0	0	0	0
Amount of demand admitted(B)	Tax/Cess	1000000	1000000	0	0
	Interest	0	0	0	0
	Penalty	0	0	0	0
	Fees	0	0	0	0
	Other charges	0	0	0	0

Details of payment of admitted amount and pre-deposit

Pre-Deposit % of Disputed Tax/Cess

10

Minimum of 10% of the disputed amount needs to be paid as Pre-deposit before filing an appeal. Lower percentage may be declared here with relevant approvals from the competent authorities.

Details of payment required

Description	Central tax (₹)	State/ UT tax (₹)	Integrated tax (₹)	Cess (₹)	
Admitted Amount	Tax/Cess	1000000	1000000	0	0
	Interest	0	0	0	0
	Penalty	0	0	0	0
	Fees	0	0	0	0
	Other charges	0	0	0	0
Pre-deposit (10% of Disputed)	Tax/Cess	60282	60282	35	0

**Knowledge Is Power,  
APPLIED KNOWLEDGE IS POWER!!**

Thank You!

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WhatsApp Updates

