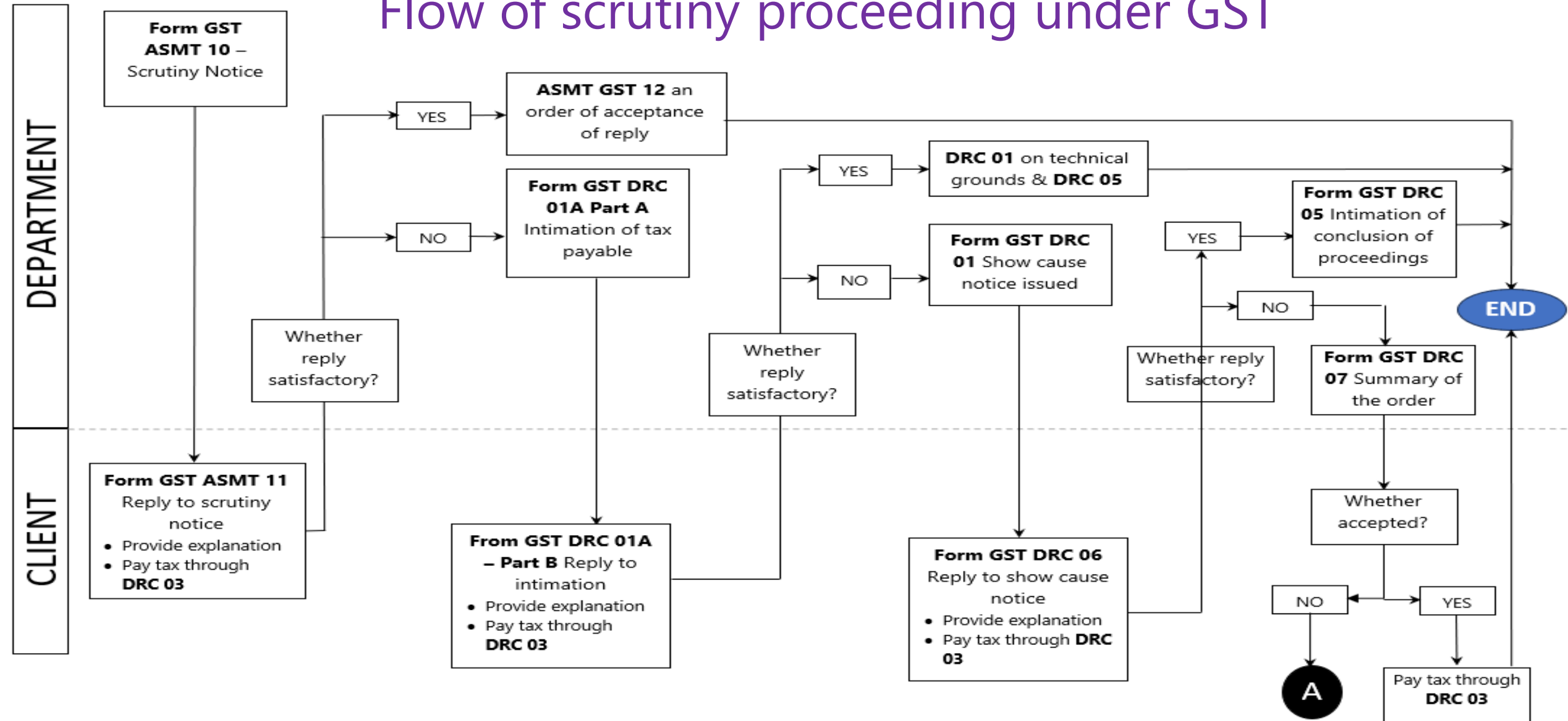


Filing appeals under GST

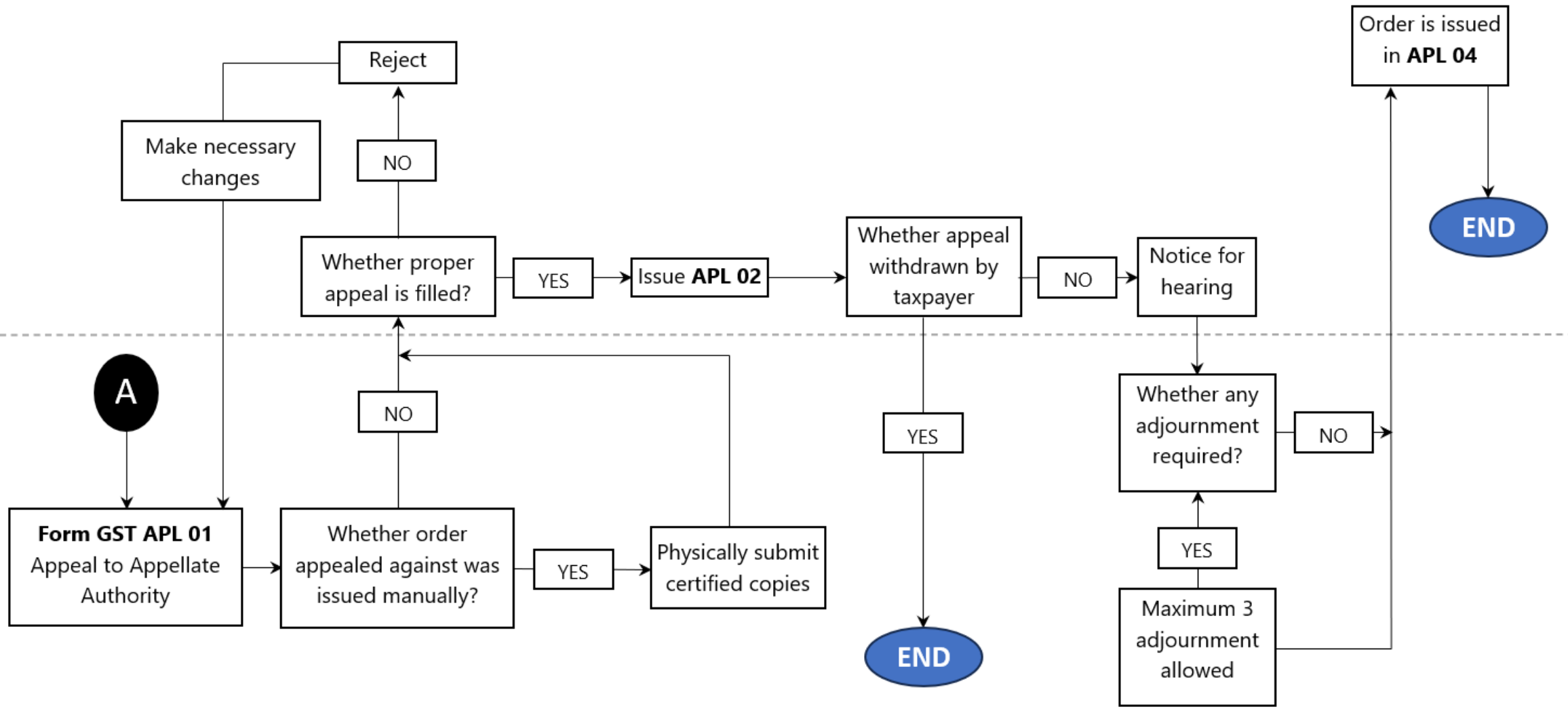


Flow of Scrutiny and Appeal Proceedings

Flow of scrutiny proceeding under GST



Flow of Appeals under GST



Various Types of Orders in GST Law

Enforcement Orders

- Order of demand of tax and penalty in GST MOV-09
- Confiscation of Goods or Conveyance in GST MOV-10

Assessment – Non Demand Order

- Rejection order for Application for Provisional Assessment
- Order for release of Security
- Rejection of Application for Rectification
- Restoration of Provisional Attachment

Assessment – Demand Order

- Assessment order in DRC-07 for section 52(TCS) ,62(Non filer), 63 (URD), 64(Special cases), 73,74,76
- Assessment order in DRC-07 for section 122,123,125,127
- Assessment order in DRC-07 for section 129, 130

Registration Order

- Rejection – REG-05
- Cancellation – REG-19
- Suo-moto registration – REG 12
- Cancellation of provisional registration – REG-28
- Rejection for Opt in/out Composition scheme – CMP-07
- Cancellation of TDS Registration – REG-08

Refund Order

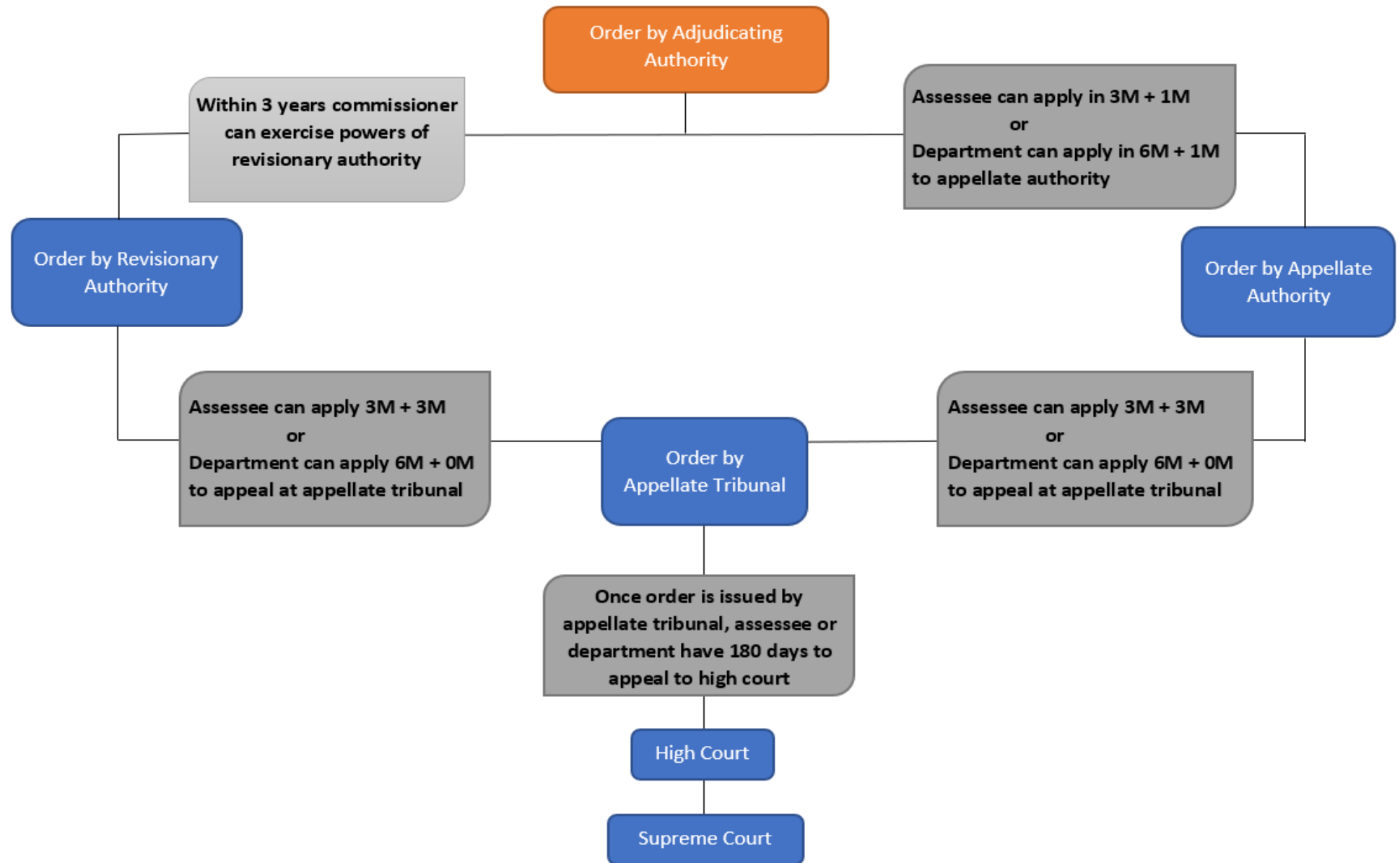
- RFD-06

Appellate Hierarchy in GST

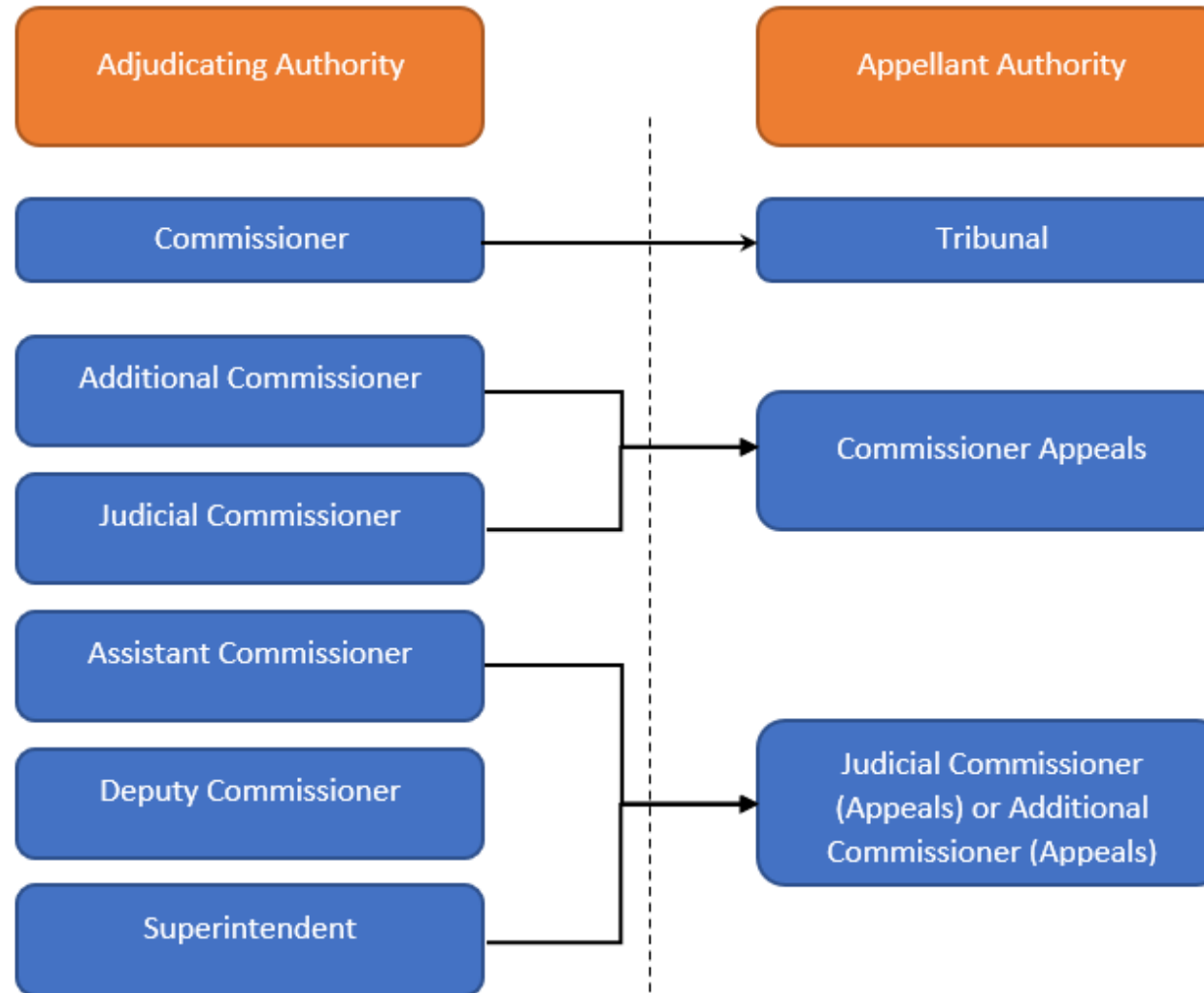
Various Appellate Authorities

Order passed	Designated appellate authority	Section
Adjudicating Authority	First Appellate Authority Power of Revisional Authority	(Section 107) (Section 108)
First Appellate Authority	Appellate Tribunal	Section 109 to 116
Appellate Tribunal	High Court	Section 117
High Court	Supreme Court	Section 118

Overview of Appeal Hierarchy In GST Law



With whom shall appeal be filled ?



Rectification of Order

Rectification of errors apparent on the face of records

Legal provision:

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act,

any authority, who has passed or issued any decision or order or notice or certificate or any other document,

may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document,

- either on its own motion or
- where such error is brought to its notice by any officer appointed under this Act or
- an officer appointed under the SGST Act or
- an officer appointed under the UTGST Act or
- by the affected person

within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be: **[Sec 161]**

Time Limit for Rectification of Errors

Legal provision:

Provided that no such rectification shall be done **after a period of six months** from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of **six months shall not apply** in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification **adversely affects** any person, the **principles of natural justice** shall be followed by the authority carrying out such rectification. **[Sec 161]**

Revisionary powers

What are the Powers of Revisional Authority in the GST Law?

Legal Provision:

- 1) Subject to the provisions of [section 121](#) and any rules made thereunder
- 2) the Revisional Authority may,
 - on his own motion, or
 - upon information received by him or
 - on request from the Commissioner of State tax,
 - or the Commissioner of Union territory tax,

call for and examine the record of any proceedings,

and if **he considers** that any decision or order passed under this Act or under the SGST Act or the UTGST Act by **any officer subordinate to him** 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, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary,

- stay the operation of such decision or order for such period as he deems fit and
- after giving the person concerned an opportunity of being heard and
- after making such further inquiry as may be necessary,
- pass such order, as he thinks just and proper,
- **including enhancing or modifying or annulling the said decision or order. [Sec 108(1)]**

When shall powers of the Revisional Authority not be exercised ?

Legal Provision: The Revisional Authority shall not exercise any power under sub-section (1), if

(a) the order has been subject to an appeal under [section 107](#) or [section 112](#) or [section 117](#) or [section 118](#); or

(b) the period specified under sub-section (2) of [section 107](#) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or

(c) the order has already been taken for revision under this section at an earlier stage; or

(d) the order has been passed in exercise of the powers under sub-section (1):

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that subsection, whichever is later. **[Sec 108(2)]**

Whether Appeal can be filed against order of the Revisional Authority ?

Legal Provision:

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of [section 113](#) or [section 117](#) or [section 118](#), be final and binding on the parties. **[Sec 108(3)]**

What are the Exclusions from the Time limit for passing order by the Revisional Authority ?

Legal Provision:

Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).**[sec108(5)]**

If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.**[Sec108(4)]**



Filing of Appeal

Can department file an appeal against its own order?

Legal Provision:

The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order. [**Sec 107(2)**]

Where, in pursuance of an order under sub-section (2), the authorised officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application. [**Sec 107(3)**]

Whether any fees to be paid for filing an Appeal under GST?

Legal provision:

An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed. [**Sec112(7)**]

The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of twenty-five thousand rupees. [**Rule 110 (5)**]

There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112. [**Rule110(6)**]

Whether Appeal can be withdrawn? If withdrawn, can Appeal be filed again?

Legal provision : The appellant may, at any time before issuance of show cause notice under sub-section (11) of [section 107](#) or before issuance of the order under the said sub-section, whichever is earlier, in respect of any appeal filed in [FORM GST APL-01](#) or [FORM GST APL-03](#), file an application for withdrawal of the said appeal by filing an application in **FORM GST APL-01/03W** :

Provided that where the final acknowledgment in [FORM GST APL-02](#) has been issued, the withdrawal of the said appeal would be subject to the approval of the appellate authority and such application for withdrawal of the appeal shall be decided by the appellate authority within seven days of filing of such application:

Provided further that any fresh appeal filed by the appellant pursuant to such withdrawal shall be filed within the time limit specified in sub-section (1) or sub-section (2) of [section 107](#), as the case may be.] An Appeal application can be withdrawn twice **[Rule 109(c)]**

Can I file Appeal application after it has been rejected at admission stage? How many times can I re-file an Appeal application?

Guidance as per GST Portal

Yes, an appeal application can be re-filed after it has been rejected at the admission stage. To file the application, navigate to the New application page. Select the Order type and enter the Order ID of the original application. Fill in the form and Submit the application.

After an Appeal application has been rejected, it can be filed once more by the taxpayer

Whether self certification required for all appeal documents?

Legal Provision: The grounds of appeal and the form of verification as contained in [FORM GST APL-01](#) shall be signed in the manner specified in [rule 26](#) [Rule 108(2)]

Person	Who can sign?
Individual	Own
Individual absent from India	person duly authorised by him
individual is mentally incapacitated	guardian or by any other person competent to act on his behalf;
Hindu Undivided Family	Karta
company	chief executive officer or authorised signatory thereof
Government	officer authorised
Trust	trustee or any trustee or authorised signatory thereof
any other person	some person competent to act on his behalf, or by a person authorised in accordance with the provisions of section 48 .
firm	Any partner not being a minor or authorised signatory thereof
any other association	member of the association or persons or authorised signatory thereof

Rule 26



What are the Monetary limits for appeal ?

•Legal Provision:

The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, **does not exceed fifty thousand rupees. [Sec112(2)]**

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. **[Sec120(1)]**

Are there any implications of Appeal not filed due to Monetary Limits?

- 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 **[Sec 120(2)]**
- 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. law **[Sec 120(3)]**
- The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1). law **[Sec 120(4)]**

How to file Appeal against manual order?

Guidance as per GST Portal

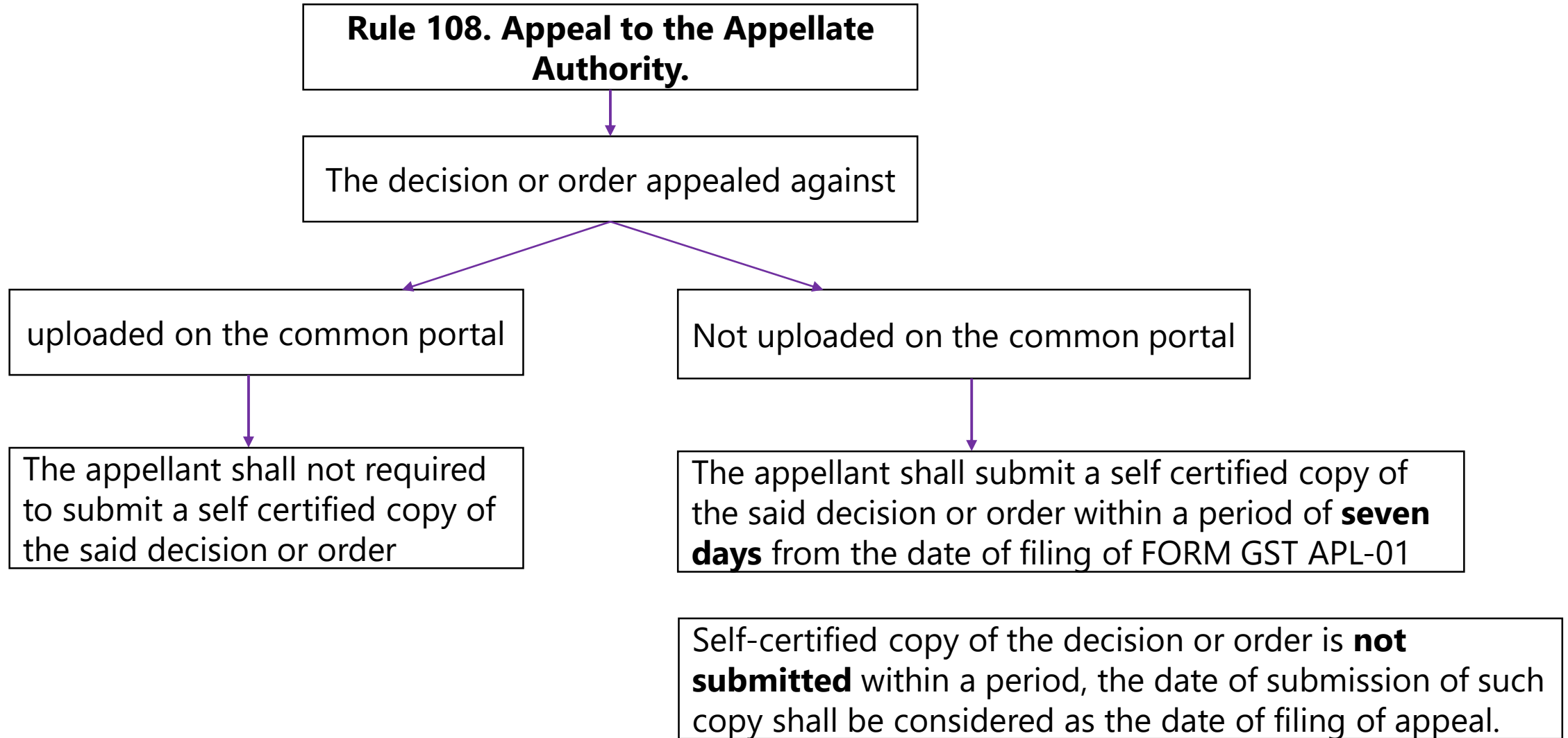
No, online appeal cannot be filed against Assessment Non-Demand orders issued offline.

Legal provision:

Where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

Provided that where the decision or order appealed against is **not uploaded** on the common portal, the appellant shall submit a self-certified copy of the said decision or order within a period of seven days from the date of filing of FORM GST APL-01 and a final acknowledgment, indicating appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an officer authorised by him in this behalf, and the date of issue of the provisional acknowledgment shall be considered as the date of filing of appeal:

When is physical submission of Appeal required ?



Payment of Pre-Deposit

When is pre-deposit required to be paid?

Legal Provision: No appeal shall be filed under sub-section (1), unless the appellant has paid-

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

(b) a sum equal to ten per cent. of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, in relation to which the appeal has been filed.

Provided that no appeal shall be filed against an order under sub-section (3) of [section 129](#), unless a sum equal to twenty-five per cent. of the penalty has been paid by the appellant.] **[Sec 107(6)]**

Explanation.— For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.**[Rule 108]**

What is amount of pre-deposit required to file appeal in GST law?

Legal Provision:

Appeal to Appellate Authority against order passed u/s 129(3)

- 25% of penalty

Other Appeals to Appellate Authority
[Section 107]

- 10% of Tax dispute, subject to a maximum of Rs. 25Cr. (CGST)

Appeal to Appellate Tribunal
[Section 112]

- Additional 20% of Tax dispute, subject to a maximum of Rs. 50Cr. (CGST)

Appral to High court / Supreme Court
(Section 129)

- 100% of sums due as per order of Tribunal/High Court. (Tax + Interest + Penalty)

Whether instalment Facility is available for pre-deposit?

Legal provision:

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery. [**Sec 80 of CGST ACT**]

What will happen to the pre-deposit amount if I do not re-file an appeal application after its withdrawal?


Guidance as per GST Portal


Whatever amount is paid (admitted along with pre deposit) is set of against the demand ID. Taxpayer is only required to pay the remainder.

How to claim refund of Pre-deposit in case of favourable appeal order?

Legal Provision

Apply for refund **within time limit specified** in Section 54

Select the Refund type: 

 Indicates Mandatory Fields

<input type="radio"/>	Refund of Excess Balance in Electronic Cash Ledger
<input type="radio"/>	Refund of ITC on Export of Goods & Services without Payment of Tax
<input type="radio"/>	On account of supplies made to SEZ unit/ SEZ developer (without payment of tax)
<input type="radio"/>	Refund on account of ITC accumulated due to Inverted Tax Structure
<input type="radio"/>	On account of Refund by Recipient of deemed export
<input type="radio"/>	Refund on account of Supplies to SEZ unit/ SEZ Developer (with payment of tax)
<input type="radio"/>	Export of services with payment of tax
<input type="radio"/>	Tax paid on an intra-State supply which is subsequently held to be inter-State supply and vice versa
<input type="radio"/>	On account of Refund by Supplier of deemed export
<input type="radio"/>	Any other (specify)
<input type="radio"/>	Excess payment of tax
<input checked="" type="radio"/>	On Account of Assessment/Provisional Assessment/Appeal/Any other order

CREATE REFUND APPLICATION

Whether interest is payable on refund of pre-deposit?

Legal provision:

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. **[Sec 115]**

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund. **[Sec 56]**

Explanation. - For the purposes of this section, where any order of refund is made by an Appellate Authority, Appellate Tribunal or any court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the court shall be deemed to be an order passed under the said sub-section (5). **[Sec 56]**

Admission of Appeal

When can appellate authority reject the appeal?

Probable Situations:

- Pre-deposit not paid in accordance with the provisions of law
- Appeal not filed within time limit prescribed
- Wrong jurisdiction
- Monetary Limit
- Not signed in manner as required

What if the time limit for filing an appeal is expired? Can appeal be filed after limitation period?

Legal provision:

The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month. **Section 107(4).**

What is the time limit for issuing APL-02 by Appellate Authority?

Guidance as per GST Portal

If there is no action taken by the Appellate authority, it will get auto-admitted as per the below details:

In case, Appellate Authority fails to issue final acknowledgment (Form GST APL-02) to the appellant (taxpayer) by end of 4 months and 7 more days from the date of submission of appeal application, in Form GST APL-01 for submission of certified copies, then a system generated Final Acknowledgement will be issued to the appellant with a remarks “Subject to validation of certified copies”.

In case, Appellate Authority fails to issue final acknowledgment (Form GST APL-02) to the appellant (Tax Official) by end of 7 months and 7 more days for submission of certified copies, then a system generated Final Acknowledgement will be issued to the appellant with a remarks “Subject to validation of certified copies”.

Date of communication/ service of the order appealed against is taken as starting date for calculation of 4/7 month.

If refund/Registration Application is rejected, whether appeal is compulsory or new application can be made ?

Whether stay application is required to be filed against any order appealed against?

Legal Provision:

Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.**[Sec 107(7)]**

For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued.**[Rule 108]**

Are there any scenarios where appeal is not allowed ?

Legal provision: [Sec 121]

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 (Installment Facility).

Hearing of Appeal's

Whether Invalid notice ground can be raised at Appellate Level?

Legal provision:

The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication. [**Sec 160(2)**]

Can appellate authority refer back cases to adjudicating authority ?

Legal Provision:

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:

Provided that an **order enhancing** any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a **reasonable opportunity of showing cause** against the proposed order: **[Sec 107(11)]**

Whether any new issue not covered in order appealed against can be considered by Appellate Authority?

Legal provision:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 **[Sec 107(11) 2nd Proviso]**

Can Appellate Authority grant adjournment?

Legal provision: The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:
Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.**[Sec107(9)]**

Whether Appellate authority can accept any additional evidence?

Legal Provision: Rule 112

a)

- Where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

b)

- Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

c)

- Where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

d)

- Where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

Whether additional grounds of appeal can be raised at hearing level, if not raised while filing appeal ?

Legal Provision:

The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable. [**Sec 107(10)**]

Who can appear before Appellate Authority ?

Legal provision:

(1) Any person who is entitled or required to appear before an officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorised representative. **[Sec 116(1)]**

(2) For the purposes of this Act, the expression "authorized representative" shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being-

(a) his relative or regular employee; or

(b) 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

(c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or

(d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who, during his service under the Government, had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years:

Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or

(e) any person who has been authorized to act as a goods and services tax practitioner on behalf of the concerned registered person. **[Sec 116(2)]**

Who cannot appear before appellate authority ?

Legal provision:

(3) No person, -

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceedings under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, or under the existing law or under any of the Acts passed by a State Legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both; or

(c) who is found guilty of misconduct by the prescribed authority;

(d) who has been adjudged as an insolvent, shall be qualified to represent any person under sub-section (1) -

(i) for all times in case of persons referred to in clauses (a), (b) and (c); and

(ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).

(4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified

Appeal Order

How shall order of Appellate Authority be communicated ?

Legal Provision:

The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision. [**Sec 107(12)**]

On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority. [**Sec 107(14)**]

A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf. [**Sec 107(15)**]

Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118 be final and binding on the parties. [**Sec 107(16)**]

Service of Notice in certain circumstances

Legal Provision:

Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

- ☐ by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
- ☐ by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
- ☐ by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- ☐ **(d) by making it available on the common portal; or**

Whether there is any time limit for appellate authority for deciding any order appealed against?

Legal Provision:

The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed: Provided that where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year. **107(13)**

Quick Revision

What are the various Appeal statuses ?

Sr.No.	Description	Status
1	Appeal Form successfully filed	Appeal Submitted
2	Appeal Form successfully admitted	Appeal admitted
3	Appeal Form is Rejected	Appeal Rejected
4	When Hearing Notice is issued	Hearing Notice issued
5	When Counter Reply received against notice	Counter reply received
6	When Show cause notice is issued	Show cause notice issued
7	Appeal is confirmed/modified/rejected	Appeal order passed
8	When hearing is adjourned and next date is issued	Adjournment granted
9	When application is filed for Rectification	Rectification request received
10	When application for Rectification is rejected	Rectification request rejected
11	Appeal is order is rectified	Rectification order passed

Procedural Guidance

Statement of Facts and Grounds of Appeal

Statement of Facts	It should mention in brief about the appellant, nature of business and the events leading to the present appeal
	It should briefly highlight allegations leveled at the time of issuance of show cause notice and findings of the order precisely
	It shall not refer to any Case-laws, Provisions of law
	Give reference to all supporting documents from inception to show-cause notices, replies submitted etc and the same shall be attached in annexure to the facts
Grounds of Appeal	Wildest possible grounds shall be taken in Appeal
	Should be crisp and concise, Should not be argumentative or narrative
	Each ground has to be given a separate head
	Cover Factual (Jurisdiction, DIN, mode of service, limitation period etc) as well as Legal grounds
	Legal grounds include Principles of Natural justice, opportunity of being heard, Non-speaking order, Interpretation, procedural lapses
	Case laws are only for supporting your contention. When mentioned, relevant para shall be reproduced

Checklist for Drafting an Appeal

Whether any order is issued under the Law

Whether the order issued is appealable under the law

Appeal lies with which authority

Time limit within which appeal is to be filed, whether application for delay in condonation is required

Whether adjudicating authority had jurisdiction to pass the order

Whether the order was passed within limitation

Whether the order is served properly

Whether pre-deposit is paid in accordance with law

Whether any additional evidence is to be submitted

Wildest possible grounds

Alternative plea, without prejudice grounds

Grounds of Appeal and Statement of facts

Who has to file and sign the appeal

Authorization letter

Appeals to High Court and Supreme Court

Appeal to High Court.

Legal Provision:

(1) Any person aggrieved by any order passed by the State Bench of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal, if it is satisfied that the case involves a substantial question of law.

(2) An appeal under sub-section (1) shall be filed within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form, verified in such manner [as may be prescribed](#):

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question. **[Sec 117]**

Appeal to High Court.

Legal provision

(4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(5) The High Court may determine any issue which-

(a) has not been determined by the State Bench; or

(b) has been wrongly determined by the State Bench, by reason of a decision on such question of law as herein referred to in sub-section (3).

(6) Where an appeal has been filed before the High Court, it shall be heard by a Bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it. **[Sec 117]**

Appeal to High Court.

Legal provision

(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(9) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, (5 of 1908.) relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

[Sec 117]

Exercise of Writ Jurisdiction

Legal provision

1. Writs can be filed to High Court as per Article 226 of the Constitution of India.
2. A writ can be filed:
 - a) When the vires of the act is required to be challenged.
 - b) When there is a violation of principle of natural justice.
 - c) Where the alternative remedy is onerous or burdensome or inadequate
 - d) The order or proceedings are wholly without jurisdiction
3. A writ petition cannot be filed in case where alternatively suitable equally efficacious remedy is available to the party.

Appeal to Supreme Court.

An appeal shall lie to the Supreme Court-

from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or

from any judgment or order passed by the High Court in an appeal made under section 117 in any case which, on its own motion or on an application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in Section 117 in the case of a judgment of the High Court.

[Sec 118]

CONNECT US

FCA Jugal Doshi



M: 90280 94428

E: jugal.doshi@gstlenz.in

Laxmi Vilas, Mukund Nagar,
Swargate, Pune



Thank you..