

Office of the
Commissioner of State Tax
Maharashtra State, 8th Floor,
GST Bhavan, Mazgaon
Mumbai-400 010.

TRADE CIRCULAR

No. JC (HQ)-1/GST/2020/Appeal/ADM-8 dated 26th May 2020.

Trade Circular No. 09 T of 2020.

To,

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Subject: Clarification in respect of appeal in regard to non-constitution of Appellate Tribunal – reg.

Ref: (1) Maharashtra Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 06.01.2020

Various representations have been received wherein the issue has been decided against the registered person by the adjudicating authority or refund application has been rejected by the appropriate authority and appeal against the said order is pending before the appellate authority. It has been gathered that the appellate process is being kept pending by several appellate authorities on the grounds that the appellate tribunal has been not constituted and that till such time no remedy is available against their Order-in-Appeal; such appeals cannot be disposed. Doubts have been raised across the field formations in respect of the appropriate procedure to be followed in absence of appellate tribunal for appeal to be made under section 112 of the Maharashtra Goods and Services Tax Act, 2017 (hereinafter referred to as the “MGST Act”). GST Policy Wing of Central Board of Indirect Taxes and Customs has issued circular No. 132/2/2020 – GST dated the 18th March, 2020 in this regard.

2. The matter has been examined in detail. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations, the Commissioner, in exercise of its powers conferred by section 168 of the MGST Act, hereby issues the following clarifications and guidelines.

3.1 Appeal against an adjudicating authority is to be made as per the provisions of Section 107 of the MGST Act. The sub-section (1) of the section reads as follows: -

*“107. (1) Any person aggrieved by any decision or order passed under this Act or the Central 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.”*

3.2 Relevant rules have been prescribed for implementation of the above Section. The relevant rule for the same is rule 109A of Maharashtra Goods and Services Tax Rules, 2017 which reads as follows: -

*“109A. **Appointment of Appellate Authority.** - (1) Any person aggrieved by any decision or order passed under his Act or the Central Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to –*

(a) the Joint Commissioner (Appeals) where such decision or order is passed by the Deputy Commissioner;

(b) the Deputy Commissioner (Appeals) where such decision or order is passed by the Assistant Commissioner or State Tax Officer,

***within three months** from the date on which the said decision or order is communicated to such person.”*

3.3 Hence, if the order has been passed by Deputy Commissioner, appeal has to be made to Joint Commissioner (Appeal). Further, if the order has been passed by Assistant Commissioner or State Tax Officer, appeal has to be made to the Deputy Commissioner (Appeal) appointed for the same.

4. 1 The appeal against the order passed by appellate authority under Section 107 of the MGST Act lies with appellate tribunal. Relevant provisions for the same is mentioned in the Section 112 of the MGST Act which reads as follows: -

*“112 (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the Central Goods and Services Tax Act may appeal to the Appellate Tribunal against such order **within three months** from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.”*

4.2 The appellate tribunal has not been constituted in view of the order by Madras High Court in case of Revenue Bar Assn. v. Union of India and therefore the appeal cannot be filed within three months from the date on which the order sought to be appealed against is communicated. In order to remove difficulty arising in giving effect to the above provision of the Act, the Government, on the recommendations of the Council, has issued **the Maharashtra Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 06.01.2020**. It has been provided through the said Order that the appeal to tribunal can be made within three months (six months in case of appeals by the Government) from the date of communication of order **or** date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, **whichever is later**.

4.3 Hence, as of now, the prescribed time limit to make application to appellate tribunal will be counted from the date on which President or the State President enters

office. The appellate authority while passing order may mention in the preamble that appeal may be made to the appellate tribunal whenever it is constituted within three months from the President or the State President enters office. Accordingly, it is advised that the appellate authorities may dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

5. Recovery of dues after disposal of appeal-

After disposal of pending appeal u/s 107, if any demand is confirmed or appellate authority has created the additional demand then in such cases tax payer shall submit a declaration in **Annexure-I** before the jurisdictional tax officer stating that he is proposing to file an appeal u/s 112(1) against the appeal order. If such declaration is not submitted within fifteen days from the communication of the said order, then it will be presumed that tax payer is not willing to file appeal against the order and recovery proceedings may be initiated as per the provisions of law.

6. This Trade Circular is clarificatory in nature and cannot be made use of for interpretation of provisions of the law. Difficulty if any, in the implementation of this Circular may be brought to the notice of the office of the Commissioner of State Tax, Maharashtra.

Yours faithfully,

Sd/-

(SANJEEV KUMAR)
Commissioner of State Tax,
Maharashtra State, Mumbai.

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Copy forwarded to the Joint Commissioner of State Tax (Mahavikas) with a request to upload this Trade Circular on the Departments Web-site.

Copy submitted with compliments to,-

- (a) The Deputy Secretary, Finance Department, Mantralaya, Mumbai-21 for information.
- (b) Accounts Officer, Sales Tax Revenue Audit, Mumbai and Nagpur.

(Shriram H. Umale)
Joint Commissioner of State Tax

(HQ)-1, Maharashtra State.

Annexure-I

(Declaration regarding proposed appeal before Appellate Tribunal)

To,

I/We, the undersigned, hereby declare that I /we, am / are proposing to file an appeal u/s 112(1) of the MGST Act, 2017, against the Order passed u/s 107. The details are as follows-

- (1) Name of the tax payer-
- (2) GSTIN-
- (3) Address of the place of Business-
- (4) Period of Appeal order-
- (5) Date of Appeal order-
- (6) Date of service of Appeal order-

I/We, the undersigned, hereby also declare that I /we, will file the appeal before tribunal u/s 112(1) **within seven days** from the date of the constitution of Appellate Tribunal.

Yours faithfully

Date-

Signature-

Place-

Name of the applicant-

Status