DAY 10;
29.05.2020
TAX INSIGHT

1.	• The Government received various representations that 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 order is pending before the appellate authority. • Henceforth, taking cognizance of above said issue the Maharashtra Government recently issued a trade notice 09/2020 in the exercise of its powers conferred by section 168 of the MGST Act to issue the clarifications and guidelines in order to clarify the issue and to ensure uniformity in the implementation of the provisions of the law across field formations pertaining to Maharashtra Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated January 6, 2020, wherein clarification in respect of GST Appeals in regard to non-constitution of Appellate Tribunal.
2.	**LEGAL BACKGROUND** **1st Appeal** **1. Appeals to Appellate Authority (Section 107 of MGST Act 2017**

	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. 2. **Appointment of Appellate authority (Rule 109A)** (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 may appeal to - (a) the Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner; (b) any officer not below the rank of Joint Commissioner (Appeals)] where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent, within three months from the date on which the said decision or order is communicated to such person. **Hence, if the order has been passed by Deputy Commissioner, the appeal has to be made to Joint Commissioner (Appeal). Further, if the order has been passed by Assistant Commissioner or State Tax Officer, the appeal has to be made to the Deputy Commissioner (Appeal) appointed for the same.*
3.	**2nd Appeal** 1. The appeal against the order passed by appellate authority under Section 107 of the MGST Act 2017 shall be filed before the appellate tribunal. (Section 112 of MGST Act 2017) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory 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.	**Madras High Court:** A Division Bench comprising of S. Manikumar and Subramonium Prasad, JJ., while deciding a writ petition in respect to declaring Sections 109 and 110 of the Central Goods and Services Tax Act, 2017 and Tamil Nadu Goods and Services Tax Act, 2017 held that, • *Section 110(1)(b)(iii) of the CGST Act which states that a Member of the Indian Legal Services, who has held a post not less than Additional Secretary for three years, can be appointed as a Judicial Member in GSTAT, **is struck down.*** • *Section 109(3) and 109(9) of the CGST Act, 2017, which prescribes that the tribunal shall consist of one Judicial Member, one Technical Member (Centre) and one Technical Member (State**), is struck down.***

	• *The argument that Sections 109 & 110 of the CGST Act, 2017, and TNGST Act, 2017 are ultra vires, in so far as the exclusion of lawyers from the scope and view for consideration as members of the tribunal, is rejected.* ***Parliament must consider amending section for including lawyers to be eligible to be appointed as Judicial Members to the Appellate Tribunal in view of the issues which are likely to arise for adjudication under the CGST Act and in order to maintain uniformity in various statutes.***
5.	• The appellate tribunal has not been constituted in view of the order cited above, 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 of the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later.
6.	• Hence, as of now, the prescribed time limit to make an application to the appellate tribunal will be counted from the date on which President or the State President enters the 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 of the State President enters the office. Accordingly, it is advised that the appellate authorities may dispose of all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.
7.	**Recovery of dues after disposal of the appeal** After disposal of a pending appeal under section 107:- • If any demand is confirmed or appellate authority has created the additional demand then in such cases taxpayer shall submit a declaration in **Annexure-I** (Given below) before the jurisdictional tax officer stating that he is proposing to file an appeal under Section 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 the taxpayer is not willing to file an appeal against the order and recovery proceedings may be initiated as per the provisions of law.

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 taxpayer-
(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.

CA Udit Swami

For the detailed procedure/queries in respect of appeals, please feel free to contact us at Contact@taxtru.in