

MONTHLY NEWSLETTER

# GST TRACKER

ISSUE: MAY 2022

**“Justice will not be served until those who are unaffected  
are as outraged as those who are.”**

**— Benjamin Franklin**

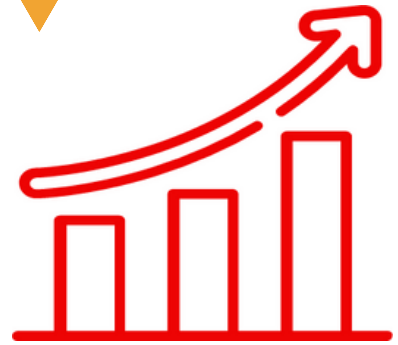


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## GST SUNRISE CLUB



MAY MEETING 

# GST Refunds

Practical difficulties and solutions including relevant Case laws

SATURDAY, 28TH MAY 2022

11:00 AM TO 12:30 PM

▶ CA RAJENDER ARORA  
Speaker

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# EDITOR'S NOTE

Mission Justice: Our team is working dedicatedly to serve our readers and to keep them updated on the GST. Since Jan 2022, we are making GST Videos related to GST Case Laws so that stakeholder can get benefit and can use these case Laws in their drafting of replies, appeals and cases.

It is proud moment for all of us that GST Revenue collection for April 2022 highest ever at Rs 1.68 lakh crore. Wishing increase in GST Revenue for the growth and prosperity of the our Nation.



(Founder Pakkabil)

## First door of Justice against Impugned Order in Original

CS Payal Kataria, Fellow member of The Institute of Company Secretaries of India with Post Graduation in Commerce, having 12 years experience as Practicing Company Secretary in Delhi NCR, provides GST advisory and consultancy services and filing of GST Appeals, reply to various GST Notices. As GST is technology driven so she also advises industry in adopting digital technologies in operations, use analytics for visibility and decision making.



CS Payal Kataria

Practising Company Secretary  
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### Aggrieved with the Order In Original!

Being GST Registered Person, are you wondering what to do?

Whose door is to be knocked for JUSTICE? May be thinking of High Courts or Supreme Court, but as per GST Act first avail and exhaust the alternative remedy to file the Appeal before Appellate Authority against impugned Order in Original as per provisions of section 107 of CGST Act.

There are various Courts Judgments/Orders where Petitions were dismissed because Petitioner did not exhaust the remedy of Appeal as mentioned under section 107 of CGST Act.

**Below are few cases where Courts dismissed the Petition on the grounds and reasons that Petitioner had not exhausted the alternative remedy to file Appeal under Section 107 of CGST Act.**

#### SUPREME COURT

In the matter of M/S. Siddhi Vinayak Trading Company Versus Union Of India & Ors.

#### ORDER

1. Since an appeal lies under Section 107 of the UP GST Act against the order of assessment, we are not entertaining the Special Leave Petition under Article 136 of the Constitution. We leave it open to the petitioners to pursue the alternative remedy keeping all the rights and contentions of the parties open.
2. The Special Leave Petition is accordingly dismissed.

## **UTTARAKHAND HIGH COURT**

In The Matter Of M/S Agarwal Timber Suppliers Versus State Of Uttarakhand, Assistant Commissioner State Tax Uttarakhand Goods And Service Tax Squad A Rampur Road, Rudrapur, State Tax Officer Uttarakhand, Depot Officer, Uttarakhand, Uttarakhand Forestdevelopment Corporation

### **ORDER**

The petitioner has filed the present writ petition challenging the order dated 17.07.2019 passed by Assistant Commissioner, State Tax, Uttarakhand Goods and Service Tax, by which a penalty of ₹ 3,41,376/- (Rupees Three Lakh Forty One Thousand Three Hundred Seventy Six Only) has been imposed upon the petitioner. Hence the present writ petition before this Court.

Learned State Counsel has apprised this Court that the petitioner has an alternative remedy under Section 107 of the Central Goods and Services Tax Act, 2017 to file an appeal before appellate authority who is the Commissioner.

Since the petitioner has an alternative remedy to file an appeal, no interference is being called for by this Court in the matter.

The writ petition stands dismissed on ground of alternative remedy.

## **KARNATAKA HIGH COURT**

Rajalakshmi Enterprises Versus additional chief secretary to Government finance department, state of karnataka, the addl. commissioner of commercial taxes (enforcement) , the commercial tax officer (enforcement) -16 south zone

### **ORDER**

1. Heard Sri Y.C. Shivakumar, learned counsel for the petitioner and Sri Hema Kumar, learned Additional Government Advocate for the respondents, and perused the impugned order dated 19.10.2020.

2. The Commercial Tax Officer (Enforcement)-16 South Zone, Bangalore by the impugned order has passed orders for confiscation of 'Goods' and 'Conveyance' under Section 130 of the Karnataka Goods and Services Tax Act, 2017 (For short, 'KGST Act') and the Central Goods and Services Tax Act, 2017 (For short, 'CGST Act') as well as Integrated Goods and Services Tax Act, 2017 (For short, 'IGST Act'). The said officer has concluded that there is contravention of Sub-Sections (i) and (v) of the provisions of Section 130(1) of the KGST Act/CGST Act.

3. The learned Counsel for the petitioner submits that the petitioner's transaction viz., purchase of arecanut from Kaduru, Chikkamagaluru District and transfer thereof to the recipient in Delhi is an inter-state transaction and in terms of Section 10 of the IGST Act, the State of Delhi would be the authority to collect taxes. The failure to produce e-way bill by the driver at the time of interception of the vehicle on Huliyaal – Shira road enroute to Delhi is a bona fide error. In any event, the officer by the impugned order could not have levied tax, penalty or fine on the market value of the property.

4. Sri N.Hema Kumar, learned Additional Government Advocate submits that the petitioner has an alternative remedy under Section 107 of the CGST Act and the time within such alternative remedy could be availed has not expired. On the question whether an appeal could lie under Section 107 of the CGST Act, a Division Bench of this Court in Writ Appeal No.3974/2019 has affirmed that indeed such remedy would be available.

5. In the facts and circumstances of the case, and in the light of the enunciation by the Division Bench in W.A.No.3974/2019, this Court is of the considered view that the petitioner must avail the alternative remedy under Section 107 of the CGST Act. At this point of time, Sri Hema Kumar, learned Additional Government Advocate points out that the authorities have not taken any precipitous action because the appeal time has not lapsed. If this be so, it would be just and reasonable to dispose of this writ petition with liberty to the petitioner to avail alternative remedy under Section 107 of the CGST Act, while directing the authorities not to take precipitous action in the limitation period within which appropriate appeal could be filed by the petitioner.

The writ petition is accordingly disposed of.

Considering the provisions of the Statute and decisions taken by various Hon'able High Courts first utilize the remedy available under Section 107 of GST Act i.e.Appeals to Appellate Authority. Below is the important points to be noted while filing Appeal under Section 107 of GST Act.

### **Take action before it's too late!**

Time: Timely filing of Appeal is very important. Apply the Appeal within three months from the date on which the impugned decision or order is communicated to such person. 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, allow it to be presented within a further period of one month.



Below is the important case Law where it was decided which date is to be considered as date of Order for the purpose of calculating time period to file Appeal under Section 107 of CGST Act.

M/S. Meritas Hotels Pvt. Ltd. Versus The State Of Maharashtra, The Union Of India, The Union Of India, The Commissioner Of State Tax, The Deputy Commissioner Of Sales Tax, Mumbai, The Joint Commissioner Of Sales Tax (Appeals -Iv), 2021 Bombay High Court Date of communication of order by e-mail is to be considered for time-limit for filing appeal with Appellate Authority and not the subsequent date of uploading in GST portal. It is well settled that the Court cannot add or subtract the words to a statute or read something into it which is not there. This is precisely what learned counsel for the petitioner wants us to do. The submission of learned counsel for the petitioner that except for communication of the impugned assessment order on the GSTN portal, all other communications are to be disregarded for the purpose of sub-section (1) of Section 107 of the said Act, is fallacious and too far fetched.

**Pre deposit:** A sum equal to ten per cent. of the amount of tax in dispute arising from the said impugned 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.

**Hearing Opportunity:** The Appellate Authority shall give an opportunity to the appellant of being heard.

**Adjournment:** 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.

**Additional Grounds:** 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.

## **Is filing of Appeal Online only?**

After submitting Appeal in the Form APL-01 online via GST Portal, one provisional acknowledgement is generated and further there is requirement to get certified copy of the impugned decision or order and submit it physically within seven days of filing the appeal Online at GST Portal and get a final acknowledgement, indicating appeal number issued in FORM GST APL-02 by the Appellate Authority or an authorized officer at the time of Physical submission of documents.

It is important to note that if certified copy of the decision or order is submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

### **It's easy to file Appeal, follow and practice certain basics points as mentioned below:**

1. Take copy of Notice, reply to this Notice filed, Copy of impugned Order in Original, call meeting with the Aggrieved Registered Person, discuss the matter with him and find the real facts.
2. Collect relevant documents, some are available at the GST Portal and rest to be collected from the client.
3. Collect related and relevant case Laws pronounced by the various Tribunals, Honorable High Courts and Supreme Court.
4. On the basis of facts prepare the grounds of Appeal, always check the most important aspect i. e Principle of Natural Justice. Mention only relevant Case laws, unnecessary and irrelevant case Laws will put bad impact.
5. Appeal should be drafted properly like correct Index, correct serial Number, Proper sequence of documents, Page No, Authority Letter to appear etc.
6. Get the Grounds and other related Documents duly signed from the Appellant.
7. File The Appeal grounds and related documents online and Submit the Certified Copy of Order with the Appellate Authority and get final Acknowledgement from them.
8. Date of hearing is communicated via GST Portal and at registered Email.

9. Attend the hearing on the date.
10. Argue your client's matter intelligently and remember the complete facts and grounds of Appeal.
11. Your Appeal should be easily understandable by the Appellate Authority. You must be aware what is written where in your Appeal file submitted.
12. Drafting of Appeal and arguing the matter requires the unique skill of Writing and Communication. Practice and acquire it!

## **GSTN Updates APRIL 2022**

Date of Issue	Subject
08/04/2022	Module wise new functionalities deployed on the GST Portal for taxpayers
27/04/2022	Enhanced Registration application user interface (UI)
28/04/2022	Webinar on 'Enhancements in GSTR-1/IFF'
30/04/2022	Advisory to composition taxpayers

Source: [www.gst.gov.in](http://www.gst.gov.in)

### **Notifications/Circulars/Orders issued in the month of APRIL 2022**

#### **Central Tax Notifications April 2022**

No Central Tax Notification was issued in the month of April 2022

#### **Central Tax (Rate) Notification April 2022**

No Central Tax (Rate) Notification was issued in the month of April 2022

#### **Integrated Tax Notification April 2022**

No Integrated Tax Notification was issued in the month of April 2022

#### **Integrated Tax (Rate) Notification April 2022**

No Integrated Tax (Rate) Notification was issued in the month of April 2022

#### **Circular issued in the month of April 2022**

No Circular was issued in the month of April 2022

## **Orders**

No order was issued in the month of April 2022

## **Removal of Difficulty Orders April 2022**

No order was issued in the month of April 2022

Source: [www.cbic.gov.in](http://www.cbic.gov.in)

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# April month Videos available

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ANDHRA PRADESH HIGH COURT

**Refund Rejected, due to Limitation Period?**

M/S. VYPLAVI GRANITES  
Vs  
THE DEPUTY COMMISSIONER OF CENTRAL TAX, THE CHIEF COMMISSIONER OF CUSTOMS, UNION OF INDIA, GOODS AND SERVICE TAX COUNCIL

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ALLAHBAD HIGH COURT

**GST Registration Rejected  
Cost of Rs 15000 imposed on erring Officers**

Ranjana Singh  
Vs  
Commissioner Of State Tax And 2 Others

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**GST Registration cancelled?  
Gujarat High Court decide case  
in favour of Taxpayer**

***MUST Watch!***

Agarwal dying and printing works  
Vs  
State of Gujarat and (2)others

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**GST AT ONE PLACE**

**MADRAS HIGH COURT**

**E way Bill: Goods detained, Movement of Goods  
from Principal Place to additional Place**

M/S. SMART ROOFING PRIVATE LIMITED  
Vs  
THE STATE TAX OFFICER (INT) , MADURAI

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