



## Increasing roadblocks to the GST Appellate route

The Maharashtra Goods and Service Tax ('GST') Authorities have issued a circular<sup>1</sup> ('Circular') prescribing a procedure to be followed for filing for an appeal with the Goods and Service Tax Appellate Tribunal ('Tribunal') that is yet to be constituted. Discussed briefly are the developments leading up to the issuance of the Circular by the Maharashtra GST Authorities:

### Background

The Madras High Court examined the constitutionality of section 109 and section 110 of the Central Goods and Service Tax Act, 2017 ('CGST Act') relating to the constitution of the Tribunal and qualifications of the members of the Tribunal, respectively<sup>2</sup>. The division bench of the Madras High Court disposed of the writ, and held that in order to determine the issues under the CGST Act, "a properly trained judicial mind is necessary", which the technical experts will not have and thus such expert members cannot exceed the number of judicial members on the bench. Given this, the Hon'ble Madras High Court struck down:

- 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 below the rank of the additional secretary for three years, can be appointed as a judicial member of the Tribunal.

- 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).

As a result of this judgment, the benches of the Tribunals were not constituted under the CGST Act and the respective State GST legislations. Consequently, taxpayers are unable to file appeals before the Tribunal under section 112 of the CGST Act, within the prescribed time limit.

To remedy this situation a removal of difficulty order<sup>3</sup> ('ROD Order') was issued by the Central Board of Indirect Taxes and Customs ('CBIC') to clarify that an appeal to the Tribunal may be filed within three months from the date on which the order is received or the date of which the president / state president of the Tribunal enters office; whichever is later.

### **Clarification by CBIC<sup>4</sup>**

The CBIC thereafter issued a circular directing the adjudicating authorities and the appellate authorities not

<sup>1</sup> Trade Circular No. 09T of 2020 dated 26 May 2020

<sup>2</sup> Revenue Bar Association v Union of India 2019 VIL 466 MAD

<sup>3</sup> ROD Order dated 3 December 2019

<sup>4</sup> Circular No. 132/2/2020 – GST dated 18 March 2020



to keep disposal of appeals pending on the grounds that the Tribunal is not constituted and that there would be no remedy available against the order or order in appeal once issued.

It was also re-instated that the prescribed limitation period to file an appeal with the Tribunal will be computed from the date on which the president / state president enters office as specified in the ROD Order.

### **Clarification by Maharashtra GST Authorities**

Corresponding to the circular and the ROD Order issued by the CBIC, the Maharashtra GST Authorities issued an identical Circular and ROD Order. However, in addition to the circular issued by the CBIC, the Maharashtra GST Authorities have prescribed a procedure to file a declaration in Annexure – 1 (also prescribed therein) within 15 days from date of communication of the order with the jurisdictional state tax officer communicating their intention to file an appeal in the future, failing which the appellant would lose his right to file an appeal and recovery proceedings would be initiated against such taxpayers.

### **Dhruva Comments:**

Section 172 of the CGST Act empowers the government to issue orders to make provisions which are “*not in consistent with the provision of the Act*”, as may be necessary or expedient for the purpose of removing the difficulties faced in giving effect to the provisions of this Act. It is an established law that a subordinate legislation cannot override the law or exceed the provisions in the law. The non-constitution of the Tribunal led the Government to relax [and extend] the time limit for filing appeals. However, the Circular of the Maharashtra GST Authorities goes beyond the mandate by introducing a procedure, outside the framework of the Act, that if the timeline laid down for filing Annexure-1 is not adhered to, it will take away the statutory right of appeal, otherwise conferred on the taxpayers by the primary legislation. The Circular also states that failure to file the declaration would result in the initiation of recovery proceedings against such taxpayers. Failure of the Government to constitute the Tribunal and the initiation of such proceedings will lead

to flooding the higher Courts with more litigation, as taxpayers are left with no efficacious remedy against the orders of the first appellate authority.

Also, consistency amongst the States and Centre is of paramount importance and the introduction of different procedures by each States could defeat this purpose.

In addition to the above, on account of the spread of Covid-19, the Hon’ble Supreme Court has issued an order, instructing that the period of limitation prescribed under the general law or specific laws [whether condonable or not] shall stand extended until further notice. The Circular is also violative of the order of the Hon’ble Supreme Court.





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