

## **Time Limit for filing appeal before Tribunal Extended – What about Pre-deposit and/or Recovery?**

By CA Arun Kumar Agarwal [arunca@knjainco.com]

Vide the Finance Bill, 2024, Sub-sec (1) of Sec 112 is proposed to be amended, empowering the government to notify a revised time limit for filing the appeal, after the Appellate Tribunal is set-up and becomes functional. The immediate issue that arises is whether the taxpayer/ appellant is required to make the pre-deposit of the required twenty/ ten percent, until the Appellate Tribunal is made functional. A close look at the provisions of sub-sec (1), (8) and (9) of Sec 112 read together with Sec 78, the scheme of the law is clear that a pre-deposit of twenty/ ten percent is required to be made, before filing the appeal, and recovery of the balance amount shall be deemed to be stayed till the disposal of the appeal. In case the taxpayer neither prefers an appeal on the requisite pre-deposit nor makes the payment of the amount of demand confirmed by the appellate authority, a recovery proceeding may be initiated. Since the time limit for filing the appeal is extended, the taxpayer should not be required to make the pre-deposit until such date, and the benefit of stay on recovery should still be available to him. However, the government preferred to come out with a circular no. 224/18/2024 dated 11.07.2024 specifying a SOP, requiring the taxpayer to make pre-deposit of the requisite amount within three months from the date of the order, even without any assurance of the Appellate Tribunal being made functional, with a threat of recovery proceeding on failure to pay such pre-deposit amount. This is merely because Sec 78 permits recovery beyond three months from the date of service of the order, instead of stating “within three months from the due date for filing an appeal before the Appellate Tribunal”, which is the intent of the legislation. The govt cannot anyway take the liberty of delaying the formation of the Appellate Tribunal, and still asking the taxpayers to make pre-deposit of a significant amount of demand (ten percent at the first appellate stage and another twenty/ ten percent at the appellate tribunal stage). This goes neither with the philosophy of ease of doing business nor with the experience so far that in most of the cases at the Appellate Tribunal stage in legacy matters, or even at the High Courts level in GST matters, demands are found to be frivolous/ illegal. Section 157(2) provides that no suit, prosecution or other legal proceedings shall lie against any officer for anything which is done or intended to be done in good faith. As long as such protection is there, some officers do not hesitate in taking any whimsical decision without legal backing and without application of a judicious mind, and without considering the extent to which the taxpayer may be put to hardship, contrary to the legal jurisprudence. Many of the demands are raised in mechanical manner, merely based on difference between different returns/ reports, without even establishing a taxable supply, the very basis for levy of GST. Such differences are often attributed to technical glitches in portal, not supported by any records and documents belonging to the taxpayers. The issues when raised by the taxpayers in the helpdesk of the portal, are often unresolved. In many cases, there are high pitch demands which, if invoked, may completely wipe-out the worth of the businesses, and even much more.

Any mandate to the taxpayer to pre-deposit thirty / twenty percent of the amount of such frivolous demands, which would be a coercion, would expose the taxpayer to undue financial hardship, causing loss and injury beyond repair. To avoid such

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hardship for the industry and trade, a parallel amendment should be brought in Sec 78, to replace the words “*within a period of three months from the date of service of such order*” with the words “*within a period of three months from the date of service of such order or the date notified under sub-sec (1) of Sec 112, whichever is later*”.

This anomaly necessarily requires attention of the Government/ GST Council with a positive mindset to genuinely facilitate ease of doing business.

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