

GOVERNMENT OF ASSAM
OFFICE OF THE COMMISSIONER OF TAXES, ASSAM :: KAR BHAWAN
DISPUR, GUWAHATI-6

CIRCULAR NO. 85/2020-GST

Dated Dispur the 21st April, 2020.

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

No. CT/GST-15/2017/319.— 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 Assam Goods and Services Tax Act, 2017 (hereinafter referred to as the “Assam GST Act”).

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 of State tax, Assam, in exercise of its powers conferred by section 168 of the Assam GST 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 Assam GST 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 Assam Goods and Services Tax Rules, 2017 which reads as follows :

“109A.(1) Any person aggrieved by any decision or order passed under this Act may appeal to –

- (a) the Commissioner of State tax or an officer authorized by him not below the rank of Additional Commissioner of State tax, where such decision or order is passed by the Joint Commissioner of State tax;*
- (b) the Commissioner of State tax or an officer authorized by him not below the rank of Joint Commissioner of State tax, where such*

decision or order is passed by the Deputy Commissioner of State tax;

(c) the Deputy Commissioner of State tax (Appeals) where such decision or order is passed by the Assistant Commissioner of State tax or Superintendent of State tax.

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 Assistant Commissioner of State tax or Superintendent of State tax, appeal has to be made to the appellate authority appointed who would not be an officer below the rank of Deputy Commissioner of State tax. Further, if the order has been passed by Deputy Commissioner of State tax, appeal has to be made to the appellate authority who would not be an officer not below the rank of Joint Commissioner of State tax. Also, if the order has been passed by Joint Commissioner of State tax, appeal has to be made to the appellate authority who would not be an officer not below the rank of Additional Commissioner of State tax.

4.1 The appeal against the order passed by appellate authority under Section 107 of the Assam GST Act lies with appellate tribunal. Relevant provisions for the same is mentioned in the Section 112 of the Assam GST 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 Hon'ble Madras High Court in case of Revenue Bar Assn. Vs. 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, **the Assam Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 11.02.2020** has issued. 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. This Circular is clarificatory in nature and not meant for any interpretation of provisions of the Act and rules.
6. Difficulties, if any, in implementation of the above instructions may be brought to the notice of the Commissioner at an early date.
7. This Circular shall be deemed to have been issued on 18th March, 2020.

Sd/- Anurag Goel,
Commissioner of State tax, Assam,
Dispur, Guwahati

Memo No. CT/GST-15/2017/319-A

Dated Dispur the 21st April, 2020.

Copy to :

1. The Commissioner & Secretary to the Government of Assam, Finance (Taxation) Department, Dispur, Guwahati-6 for favour of kind information.
2. The Commissioner of Central GST, Guwahati / Dibrugarh for information.
3. The Additional Commissioner of State tax (All) / Joint Commissioner of State tax (All)/ Deputy Commissioner of State tax (All) / Assistant Commissioner of State tax (All) / Superintendent of State tax (All) / Inspector of State tax (All) for information and necessary action.
4. The Information Technology Officer, Office of the Commissioner of State tax, Assam for uploading it on the website of the Commissionerate for information of all concerned.



Commissioner of State tax, Assam,
Dispur, Guwahati