

11.1 Nature of appealable orders

The right of appeal is a statutory right. It is a substantive right and hence cannot be defeated on procedural infirmities. Sec. 112(1) of the CGST Act, 2017 provides that any person aggrieved by an order passed against him under section 107 or section 108 of the CGST Act or the SGST Act or the UTGST Act may appeal to the Appellate Tribunal against such order. Sec. 107 provides for the order of the first appellate authority, and Sec. 108 provides for the order of the revisional authority.

Sec. 112(1) uses the expression 'order'. The said word has not been defined in the Act. Hence, the meaning of the said word will have to be determined in the context of Sec. 107 & Sec. 108 of the Act.

Sec. 107(11) of the CGST Act, 2017 grants power to the first appellate authority after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order. Hence, the right of appeal u/s 112(1) shall be available against any order passed by the first appellate authority.

11.2 Remand orders

The issue arises as to whether the right of appeal u/s 112(1) of the CGST Act, 2017, is available against the order of the first appellate authority remanding the matter back to the adjudicating authority. The issue arises because, as stated earlier, Sec. 107(11) of the CGST Act, 2017 expressly does not permit the first appellate authority to refer the case back

to the adjudicating authority. Since Sec. 112(1) of the CGST Act, 2017 grants a right of appeal against any order passed u/s 107 without distinguishing as to whether such order has been in excess of jurisdiction, the aggrieved person shall have a right to appeal even against such remand orders.

11.3 Orders enhancing liabilities

First proviso to Sec. 107(11) of the CGST Act, 2017 provides that the first appellate authority can pass an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit provided that the appellant has been given a reasonable opportunity of showing cause against the proposed order. The second proviso further provides that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74 or section 74A. Since Sec. 112(1) of the CGST Act, 2017 provides for a right of appeal against any order passed u/s 107, the aggrieved person shall have a right of appeal even against the order passed by the first appellate authority enhancing the liabilities.

11.4 Revisional orders

Sec. 108(1) of the CGST Act, 2017 grants power to the revisional authority to pass an order as he thinks just and proper, including enhancing or modifying or annulling the said decision or order if the authority finds that the original order is erroneous insofar as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India subject to the restrictions and limitations provided u/s

108. Sec. 112(1) of the CGST Act, 2017, therefore, confers the right of appeal against such revision orders.

Sec. 112(3) of the CGST Act, 2017 grants the right to file an application (departmental appeal) against the order passed by the Appellate Authority or the Revisional Authority. Hence, the right of appeal has also been granted to the Revenue against the order passed u/s 107(11) or Sec. 108(1) of the CGST Act, 2017.

11.5 Non-judicial orders

Hon'ble Supreme Court in *Jaswant Sugar Mills Ltd. v. Lakshmi Chand* 1962 SCC OnLine SC 20 held that to make a decision or an act judicial, the following criteria must be satisfied:

- ◆ it is in substance a determination upon investigation of a question by the application objective standards to facts found in the light of pre-existing legal rules;
- ◆ it declares rights or imposes upon parties obligations affecting their civil rights; and
- ◆ that the investigation is subject to certain procedural attributes contemplating an opportunity of presenting its case to a party, ascertainment of facts by means of evidence if a dispute be on questions of fact, and if the dispute be on question of law on the presentation of legal argument, and a decision resulting in the disposal of the matter on findings based upon those questions of law and fact.

Hon'ble Supreme Court in *Union of India v. Tarachand Gupta & Bros.* 1983 (13) E.L.T. 1456 (S.C.) held that a civil suit will lie if the Collector acts in excess of jurisdiction. It was held that the provision excluding the jurisdiction of civil Courts cannot apply to cases where the provisions of the particular statute have not been complied with or the tribunal has not acted in conformity with the fundamental principles of judicial procedure and a determination by a tribunal of a

question other than the one which the statute directs it to decide and hence such orders are a nullity in law.

Therefore, the orders contrary to the principles of natural justice, in devoid of jurisdiction or excess of jurisdiction, can be said to contravene Article 14 as well as Article 265. Legally, they cannot be considered to be 'orders' in accordance with the law. One may refer to the discussion with respect to writ remedies. Hence, such orders can be challenged under Article 226.

11.6 Letters can be appealable orders

Hon'ble Karnataka High Court in *Chief Commissioner, LTU, Bangalore v. TNT India Pvt. Ltd.* 2010 (19) S.T.R. 5 (Kar.) in the context of whether a letter issued by Commissioner of service tax indicating the liability to pay service tax can be considered as an "order" and hence appealable, held that any communication purportedly determining liability in exercise of the powers under the law can be considered as an 'order' and hence appeal against such communication is maintainable.

In the present context, since Sec. 112(1) of the CGST Act, 2017, *inter alia*, grants jurisdiction to GSTAT against the orders passed by the first appellate authority, one has to consider whether the determination of liability made by way of letter appears to be in exercise of powers u/s 73 or 74 or 74A of the CGST Act, 2017 and if the same are found to be appealable, then against the order of the first appellate authority, second appeal shall lie before the GSTAT.

Sec. 112(1) of the CGST Act, 2017 provides that any person aggrieved by an order passed against him under section 107 or section 108 of the CGST Act or the SGST Act, or the UTGST Act may appeal to the Appellate Tribunal against such order. Hence, the right of appeal has been vested with the person who is aggrieved by an order passed against him.

12.1 Meaning of aggrieved person

Black's Law Dictionary (4th Edition) defines the expression 'aggrieved' as having suffered loss or injury; damnified; injured. The expression "AGGRIEVED PARTY" has been defined as one whose legal right is invaded by an act complained of, or whose pecuniary interest is directly affected by a decree or judgment.

Hon'ble Supreme Court in *Mani Subrat Jain etc. v. State of Haryana* (1977) 1 SCC 486 held that a person can be said to be aggrieved only when a person is denied a legal right by someone who has a legal duty to do something or to abstain from doing something. P Ramanatha Aiyar's Advanced Law Lexicon (5th Edition) defines the expression "Aggrieved party" as the persons whose rights are adversely affected by a judgment, decree, or order. A person whose legal rights have been affected, injured, or damaged in a legal sense.

Hon'ble Supreme Court in *Nalakath Sainuddin v. Koorikandan Sulaiman* (2002) 6 SCC 1 held that the aggrieved party means a person feeling aggrieved by the ultimate decision, that is, the operative part of the order. Hon'ble Supreme Court in *A. Subash Babu v. State of A.P.* (2011) 7 SCC 616 held that the expression 'aggrieved person' denotes an elastic and elusive concept. It cannot be confined within the bounds of a rigid, exact, and comprehensive definition. Its scope and meaning

depend on diverse, variable factors such as the content and intent of the statute of which the contravention is alleged, the specific performances of the case, the nature and extent of the complainant's interest, and the nature and extent of the prejudice or injury suffered by the complainant.

Constitution Bench of the Hon'ble Supreme Court in *Adi Pherozshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, Bombay* [1970 (2) SCC 484], in the context of who can be considered as 'person aggrieved', held as under:

“Generally speaking, a person can be said to be aggrieved by an order which is to his detriment, pecuniary or otherwise or causes him some prejudice in some form or other. A person who is not a party to a litigation has no right to appeal merely because the judgment or order contains some adverse remarks against him. But it has been held in a number of cases that a person who is not a party to a suit may prefer an appeal with the leave of the appellate court and such leave would not be refused where the judgment would be binding on him under Explanation 6 to Section 11 of the Code of civil procedure. We find ourselves unable to take the view that because a person has been given notice of some proceedings wherein he is given a right to appear and make his submissions, he should without more have a right of appeal from an order rejecting his contentions or submissions. An appeal is a creature of statute and if a statute expressly gives a person a right to appeal, the matter rests there.”

Hon'ble Supreme Court in *Jasbhai Motibhai Desai v. Roshan Kumar Haji Bashir Ahmed* [(1976) 1 SCC 671] held as under:

“Thus, in substance, the appellant's stand is that the setting up of a rival cinema house in the town will adversely affect his monopolistic commercial interest, causing pecuniary harm and loss of business from competition. Such harm or loss is not wrongful in the eye of law, because it does not result in injury to a legal right or a legally protected interest, the business competition causing it being

a lawful activity. Juridically, harm of this description is called damnum sine injuria, the term injuria being here used in its true sense of an act contrary to law [Salmond on Jurisprudence, 12th Edn. by Fitzgerald, p. 357, para 85]. The reason why the law suffers a person knowingly to inflict harm of this description on another, without holding him accountable for it, is that such harm done to an individual is a gain to society at large.”

Hon’ble Supreme Court in *Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd.* 1997 (91) E.L.T. 502 (S.C.) held that ‘person aggrieved’ includes only such persons who have a direct legal interest in the concerned matter. The Hon’ble Court held as under:

“10. It is true that the phrase ‘person aggrieved’ is wider than the phrase ‘party aggrieved’. But in the entire context of the statutory scheme especially sub-section (3) of Section 129A it has to be held that only the parties to the proceedings before the adjudicating authority Collector of Customs could prefer such an appeal to the CEGAT and the adjudicating authority under Section 122 can prefer such an appeal only when directed by the Board under Section 129D(1) and not otherwise. It is easy to visualise that even a third party may get legitimately aggrieved by the order of the Collector of Customs being the adjudicating authority if it is contended by such a third party that the goods imported really belonged to it and not to the purported importer or that he had financed the same and, therefore, in substance he was interested in the goods and consequently the release order in favour of the purported importer was prone to create a legal injury to such a third party which is not actually arraigned as a party before the adjudicating authority and was not heard by it. Under such circumstances such a third party might perhaps be treated to be legally aggrieved by the order of the Collector of Customs as an adjudicating authority and may legitimately prefer an appeal to the CEGAT as a ‘person aggrieved’. That is the reason why the Legislature in its wisdom has used the phrase ‘any

person aggrieved' by the order of Collector of Customs as adjudicating authority in Section 129A(1). But in order to earn a locus standi as 'person aggrieved' other than the arraigned party before the Collector of Customs as an adjudicating authority it must be shown that such a person aggrieved being third party has a direct legal interest in the goods involved in the adjudication process. It cannot be a general public interest or interest of a business rival as is being projected by the contesting respondents before us."

Hon'ble Supreme Court in *U.P.S.R.T.C. v. Commissioner of C. Ex. & Service Tax* 2011 (21) S.T.R. 357 (S.C.) held that since no notice was issued by the respondents to the appellant demanding payment of service tax from it and according to the respondents, the liability to pay such service tax under the provisions of Section 65 of the Finance Act is that of the private bus operators and not the appellant, it was held that only the private bus operators can be considered as persons aggrieved and hence the appellant who had merely received a communication from the respondents requesting to supply the list of contractual assignment entered into between the private parties who have offered their buses on rent basis to the appellant, cannot have the right to challenge such communication.

Hon'ble Karnataka High Court in *Gepach International v. Commissioner of C. Ex* 2011 (267) E.L.T. 591 (Kar.) held that a Merchant-exporter who executed a bond undertaking to pay the duty on non-completion of export obligation cannot have the right of appeal when the appellant is not the person who is liable to pay excise duty. Only the manufacturer, who is liable in law to pay the duty, has a right of appeal.

Hon'ble Bombay High Court in *Usha B. Agarwal v. Commissioner of Central Excise, Mumbai-VII* 2009 (243) E.L.T. 492 (Bom.) held that appellant who had purchased goods on which earlier it was assumed that no excise duty was payable and had given a Bank guarantee to the effect that in event the excise duty demanded, he will reimburse the same to the supplier *viz.* O.N.G.C. held that the appellant

can be said to be a person aggrieved as prejudice has been occasioned to him by O.N.G.C. in not preferring an appeal, and the appellant having to pay excise duty, which, in his opinion, is not payable.

Hon'ble Calcutta High Court in the case of *Mehndihasan Rahemtulla Hariyani v. Deputy Commission of Revenue* (2023) 2 Centax 270 (Cal.)/[2023] 146 taxmann.com 430 (Cal.) held that even though the adjudication proceeding u/s 129 of the CGST Act, 2017 (relating to the E-way bill infractions) was initiated and passed against the driver/in-charge of the vehicle in question, the petitioner's concern being the consignee of the goods, had a reason to be aggrieved by the said order of the adjudicating authority and hence has a right of appeal.

The aforesaid discussion reveals that the person can be said to be aggrieved when the legal right of said person has been vitiated or the respondent authority has failed to perform the legal duty, and the same has caused prejudice or damage or injury, or pecuniary liability on the said person in the context of the given Statute.

Now, in the context of GST, Sec. 112(1) of the CGST Act, 2017 vests the right of appeal in the person who is aggrieved by an order passed against him under Section 107 or Section 108 of the CGST Act. Hence, the person who is aggrieved against the order passed against him by the first appellate authority (Sec. 107) or the revisional authority (Sec. 108) will have the right of appeal. The said person can be aggrieved with any of the findings of the given orders. Hence, it is not necessary that the findings must result in the tax liability. The person can also be aggrieved due to the findings, such as non-consideration of evidence, non-consideration of legal grounds, date of service of the adjudication order resulting in wrongful dismissal of the appeal on limitations, manner of determination of quantum of pre-deposit, manner of payment of a pre-deposit, etc. The scope of right of appeal u/s 112(1) of the CGST Act, 2017 is very wide. However, an alien to the proceedings whose legal right is not affected in any way by the passing of an order u/s 107 or 108 cannot be considered as an aggrieved party.