Business Advisor

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Raising monetary limits for appeals by the I.T. Dept. in adverse decisions – whether this will reduce the number of appeals in different appellate forums

T. N. Pandey

The media has been publishing in a big way the praises showered by the income-tax payers, CAs, tax consultants and advocates regarding Govt.'s decision to enhance the monetary limits for filing appeals in adverse decisions before 3 appellate authorities mentioned in the Income Tax Act, 1961, namely, the Income Tax Appellate Tribunal, the High Court and the Supreme Court. The present limits for filing appeals before these forums and what these will be after the implementation of the new limits are tabulated below:-

Name of authorities	**Current limit [total tax implications]**	**Revised limit**
Appellate authorities – ITAT/ CESTAT	10 lakh	20 lakh
High Court	20 lakh	50 lakh
Supreme Court	25 lakh	One crore

[These limits will not apply in cases involving substantial questions of law]

[2] Impact of the decision

The impact of this decision, as reported in the *Economic Times* dt. 12th July, 2018, would be as under:-

*Sharp decline in the number of cases once this is implemented;

*Going ahead, the number of decisions appealed will also fall.

[2.1] Percentage of CBDT appeals to be withdrawn with these higher limits

	CBDT	CBIC
ITAT/CESTAT	34%	16%
High Court	48%	22%
Supreme Court	54%	21%
Total	41%	18%

[3] Benefits sought to be achieved by the change

The stated benefits are:-

*Facilitating more ease in doing business;

*To bring down litigation;

*To channelise the departments' energies in high value cases;

*Bringing up the limits will benefit both the taxpayers and the tax administration; currently, tax tribunals and courts are burdened with pending tax cases and there is a dire need to take some concrete action;

*The decision is hailed as a major right step in direction of litigation management in the context of both direct and indirect taxes as it will

https://www.incometaxindia.gov.in/communications/circular/circular_3_2018.pdf

Circular No. 3/2018

F No 279/Misc. 142/2007-ITJ (Pt)
Government of India
Ministry of Finance
Department of Revenue
Central Board Direct Taxes

New Delhi the 11th July, 2018

Subject: Revision of monetary limits for filing of appeals by the Department before Income Tax Appellate Tribunal, High Courts and SLPs/appeals before Supreme Court-measures for reducing litigation-Reg.

Reference is invited to Board's Circular No. 21 of 2015 dated 10.12.2015 wherein monetary limits and other conditions for filing departmental appeals (in Income-tax matters) before Income Tax Appellate

effectively reduce the number of appeals.

[4] It may be mentioned that this is not the first time when such enhancements in monetary limits for filing appeals has been made. At least 3 times in the past (to my recollection), the limits have been raised on similar lines and on similar grounds and the fact that the limits are required to be raised at frequent intervals indicates that (i) there is something fundamentally wrong in making of assessments that needs such revision of monetary limits from time-to-time to cut down the workload of appeals; & (ii) the system of raising the monetary limits in the past has not been effective and, hence, it needs to be examined as to why it is not producing the required results before revising the limits again resorted to drastically. The recent decision to enhance the limits raises the issue as to why the limits should be raised again when the same have not been helpful in the past in reducing the number of appeals.

[4] Appraisal of the proposal

In the past, and this time too, the limits have been raised without making any empirical studies to find out what has been the success in reducing appeals, when such exercises were resorted to earlier. Without such a study, the raising of limits frequently on ad hoc basis does not indicate good decision-making. Examining the results of past experiments was a necessary exercise to be done before taking decision to hike the limits to such heights. This is the steepest rise vis-à-vis the previous exercises. If the past attempts did not succeed, what is the certainty that this attempt will result in the required results. However, one thing is apparent and it is the loss of revenue of considerable amounts by such hikes and, hence, it was incumbent for the decision-makers to weigh pros and cons of the decision before announcement of the new scheme of raising the limits.

[5] Catering to basic problem is necessary

The problem of rising appeals cannot be solved by such ad hoc measures of raising the limits, which have failed in the past. The problem lies at the decision-making levels when various authorities take decisions to file the appeals.

[5.1] The stage whether appeal should be filed or not arises for the first time after the CIT(A)'s decision against the AO's order is received. In such a situation, the first appeal lies to the Income Tax Appellate Tribunal (Tribunal) [which decision has to be approved/ authorised by the next higher authority of the AO, which is generally the Commissioner of Income Tax (CIT)]. When the Tribunal's decision is also against the I.T. Dept., the

next appeal lies to the High Court. Here too, the decision whether appeal should be filed before the High Court or not is to be decided with the approval of the CIT or Chief CIT or Pr. CIT, as the case may be. When the HC's decision too goes against the I.T. Dept., then appeal to the SC can be filed by the CBDT with the approval of the Director General, Legal & Research (L&R), to whom the reports against adverse decisions are sent by the field officers. With their recommendations whether to take the matter to the apex court or not, the DG (L&R) processes such proposals further and gives his recommendations to the CBDT about approaching the SC or not against the HC's order. The CBDT then recommends whether to file the SLP to the SC or not, to the Ministry of Law, which has the final say in the matter of litigation before the SC. Only matters involving substantial question of law that require adjudication of the apex court are carried to the SC.

[5.2] Regretfully, a number of appeals that are filed before the Tribunal and also before the HCs are from the I.T. Dept. With utmost respect to the officers of the I.T. Dept., where decisions for filing appeals are taken, the requisite care is not exercised and the decisions are not minutely examined by the senior functionaries of the I.T. Dept. and appeals are filed merely considering the amount of revenue without much regards to the merits of the cases. If proper scrutiny is done at the level of the senior functionaries (up to the HC stage) before filing the appeals, the number of appeals will automatically come down and there would be no need to resort to such ad hoc measures for reducing the workload of appeals. The present practice is counter-productive. First, abnormal high assessments are made by making huge additions to the returned incomes and when the same are knocked down by the appellate authorities, then decision is taken not to file appeals.

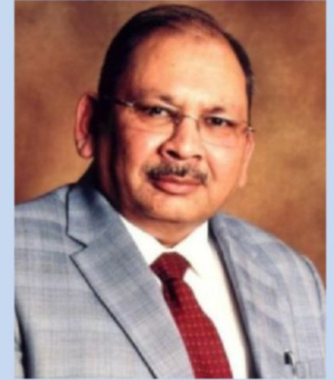
[6] Summing up

The need is to go to the root cause of the increase in number of appeals and not to take ad hoc decisions of the type stated hereinbefore regarding appeals. The present system is leading to unproductive work at different levels in the I.T. Dept. (and also for the assessees) without achieving anything in the ultimate. This can be prevented by fixing accountability for those (and consequent taking departmental action) who approve filing of appeals in a casual manner to avoid responsibility on the ground that the revenue involved is substantial. Without doing that, a stage may come that no appeals need be filed because these increase the quantum of work. Simultaneously, the senior officers of the I.T. Dept. also need to be assured that no action against them will be taken for bona fide decisions.

(T. N. Pandey is Former Chairman, Central Board of Direct Taxes.)

Establishment of profiteering 'must' for contravention of GST law

Dr Sanjiv Agarwal



While the number of complaints being filed before National Anti-profiteering Authority (NAA) is on rise, still in the majority of cases, the case for contravention of section 171 of the GST law is not established, as profiteering has to be established or substantiated , i.e., not passing of benefit of tax rate reduction and/ or input tax credit.

Business entities need not worry about such complaints as the NAA shall adjudicate such cases only on the basis of documentary evidence and facts following principles of natural justice. A few of such complaints recently adjudicated go on to prove that the NAA does not proceed with the pre-determined mindset that each complaint received by it is a fit case of profiteering where section 171 has been contravened.

- ***Kerala State Screening Committee on Anti-profiteering & DGAP, New Delhi v. Impact Clothing Co, Bengaluru (2018) 12 TMI 1404; (2018) 100 taxmann.com 489 (NAA)***

  (*Date of Order 24.12.2018)*

In this case, complaint was against readymade garments (shirts) supplier that the benefit of reduction in tax rate at the time of GST implementation w.e.f. 1.7.2017 was not passed based on invoices dated 2.6.2017 (pre-GST period) and 14.08.2017 (post-GST period) as per given table.

These shirts were exempted from Central Excise duty, vide Notification No. 30/2004-CE dated 09.07.2004 and attracted only Central Sales Tax (CST) @ 2%. After implementation of the GST w.e.f. 01.07.2017, the tax rate of these products was fixed 5%.

The rate of tax on these shirts was actually increased from 2% in the pre-GST era to 5% in the post-GST era. Moreover, the pre-GST and post-GST base prices (excluding tax) had remained the same.

www.naa.gov.in/docs/1545657019Impact%20Clothing%20Order.pdf

Table

S. No.	Description of the Product	Pre-GST			Post-GST			Difference in Price(Rs.)
		Invoice No./Date	Tax Rate (CST)	Base Price (Rs)	Invoice No./Date	Tax Rate (GST)	Base Price (Rs)	
1.	Impact Shirts 700-800 H/S M.R.P. 439	211 dated 02/06/2017	2%	303/-	493 dated 14/08/2017	5%	303/-	-
2.	Impact Shirts 700-800 F/S M.R.P. 449	211 dated 02/06/2017	2%	310/-	493 dated 14/08/2017	5%	310/-	-
3.	Impact Shirts 900 H/S M.R.P. 489	211 dated 02/06/2017	2%	338/-	493 dated 14/08/2017	5%	338/-	-
4.	Impact Shirts 900 F/S M.R.P. 499	211 dated 02/06/2017	2%	345/-	493 dated 14/08/2017	5%	345/-	-
5.	Impact Shirts 1500 H/S M.R.P. 689	211 dated 02/06/2017	2%	475/-	493 dated 14/08/2017	5%	475/-	-
6.	Impact Shirts 1500 F/S M.R.P. 699	211 dated 02/06/2017	2%	482/-	493 dated 14/08/2017	5%	482/-	-

Therefore, the provisions of section 171 of the CGST Act, 2017 have not been contravened and the allegation of profiteering by the supplier was not established.

The NAA noted that it is clear from the perusal of the facts of the case that there was no reduction in the rate of tax on the above products w.e.f. 01.07.2017 and hence the anti-profiteering provisions contained in section 171 (1) of the CGST Act, 2017 are not attracted. Also, there was no increase in the per unit base price (excluding tax) of the these products and therefore, the allegation of profiteering was held to be not sustainable in terms of section 171 of the CGST Act, 2017.

The complaint was accordingly dismissed.

- ***State level Screening Committee on Anti-profiteering, Kerala and DGAP, New Delhi v. Panasonic India Pvt. Ltd., Trivandrum (2018)12 TMI 1403; (2018) 100 taxmann.com 487 (NAA)***

  (Date of Order 24.12.2018)

In this complaint, profiteering by supplier of Panasonic LED was alleged by not passing on the benefit of reduction in the rate of tax at the time of implementation of GST w.e.f. 01.07.2017. It was alleged that the supplier

had indulged in profiteering in contravention of the provisions of section 171 of CGST Act, 2017.

The following two invoices dated 15.06.2017 (pre-GST period) and 22.07.2017 (post-GST period) were relied upon:

ecure | www.naa.gov.in/docs/1545656889scan0007.pdf

S. No.	Description of the product supplied	Pre GST Invoice No. 140217101517 dated 15.06.2017			Post GST Invoice No. 14021702034 dated 22.07.2017		
		Base price (Rs.)	Total Tax (Rs)	Total Price (Rs.)	Base price (Rs.)	GST (Rs.)	Total Price (Rs.)
1.	Panasonic LED TH43E200DX#45 580 (HSN code 85281211)	27,428/-	7349/- (Rs. 2945/- Central Excise Duty @ 12.5% on 65% of abated MRP of Rs. 36250/- as per Annexure-7) + Rs 4404/- VAT @14.5% on discounted price Rs. 30,373/-)	34,777/-	27818/- (after discount)	7789/- (28% GST)	35,607/-
Total Tax Pre-GST in (%)			26.79%		Total Tax Post-GST in (%)	28%	

On a scrutiny of invoices, DGAP observed that in the pre-GST era, the subject product attracted VAT @ 14.5% and Central Excise Duty @ 12.5% on 65% of abated MRP of the product, in terms of Notification No. 49/2008 Central Excise (N.T.) dated 24.12.2008. On implementation of the GST w.e.f. 01.07.2017, the GST rate on this product was fixed at 28%. It was reported by DGAP that there was an increase in the rate of tax on the said product from 26.79% in the pre-GST era (VAT and Excise Duty) to 28% in the post-GST era and there was no reduction in the rate of tax. Consequently, as there was no reduction in the tax rate of the said product the provisions of section 171 of the CGST Act, 2017 were not contravened and hence the

secure www.naa.gov.in/docs/1545656889scan0007.pdf

8. It is apparent from the perusal of the facts of the case that there was no reduction in the rate of tax on the above product w.e.f. 01-07-2017 and that the rate of tax in the Post-GST era has also been increased from 26.79% to 28%, therefore, the allegation of profiteering is not sustainable in terms of Section 171 of the CGST Act, 2017. As such, we do not find

allegation of profiteering by the respondent was not established.

The NAA noted that the only issue that needs to be dwelled upon is as to whether there was a case of reduction in the rate of tax and whether the provisions of section 171 of CGST Act, 2017 are attracted. The NAA concluded that there was no reduction in the rate of tax on the above product w.e.f. 01-07-2017 and that the rate of tax in the post-GST era has also been increased from 26.79% to 28%, therefore, the allegation of profiteering is not sustainable in terms of section 171 of the CGST Act, 2017.

The complaint was accordingly dismissed.

End note

In all the above complaints adjudicated by the NAA, it has been found that there was no *prima facie* case established and that the complaints should not have reached this stage involving crucial time of DGAP as well as the NAA, besides money spent on such adjudication. It would be desirable for the policy makers to appropriately amend the rules to ensure that:

a) Only complaints with substantial or material evidence leading to anti-profiteering are forwarded to DGAP;

b) DGAP be authorised to dispose of complaints at its level up to a certain amount or where no ground for complaint is established without referring the matter to NAA;

c) In case of infructuous complaints, a cost be imposed on the complainant;

d) To discourage petty complaints or complaints without material evidence, complaints should be accompanied by prescribed fee;

e) A threshold limit may be prescribed for adjudication of complaints by the Screening Committee and DGAP so that the number of complaints reaching the NAA is reduced.

It may be noted that taking cognisance of cases *suo moto* is already there in GST law which can always be invoked in larger public interest.

(Dr Sanjiv Agarwal is Partner, Agarwal Sanjiv & Company, Jaipur.)

Recent developments in GST

Dr Sanjiv Agarwal

The GST Council held its 33rd meeting on 20.02.2019 via video conference but it had to be adjourned (the first ever adjournment) to Sunday, 24th February, 2019 when it will be held in physical format, on request by many states.

In the meeting held on 20th, there was no consensus on tax rates on real estate sector and uniform rate on lotteries as suggested by Group of Ministers. It, however, decided to extend the deadline for filing of GST summary return (Form 3B) by 2 days to 22 February, 2019 and to 28 February, 2019 for Jammu & Kashmir State. A notification has also been issued to this effect on 20.02.2019.

A Group of Ministers set up by the Council and headed by Gujarat Deputy Chief Minister Nitin Patel had suggested cutting GST on under-construction residential properties to 5% without input tax credit (ITC), from 12% now. For the affordable housing segment, it suggested that GST rate of 3% against 8% now.

Currently, a state-organised lottery attracts 12% GST while a state-authorised lottery attracts 28% levy. The GoM favoured GST rate on the state-organised lottery raised to 18% or 28% while lowering rate on State-authorised lottery to 18% or retaining it at 28%.

Recently, CBIC has issued a few Circulars clarifying on mentioning of details of inter-State supplies in GST returns made to unregistered persons, compliance in invoices for inter-State supplies and tax payment made for supplies of warehoused goods while being deposited in Customs bonded warehouse.

Now the focus has shifted to GST Council meeting of 24th February, 2019 wherein crucial decisions on lotteries, real estate and rates on cement etc. may be discussed. With general elections in the offing, citizens and tax payers can very well expect some good days ahead.

❖ **New return filing system of GSTN**

➢ GSTN will focus, amongst others, on the development of new return filing, further improving the user interface, and business intelligence and analytics.

➢ GSTN has started work on BI & analytics. Different scenarios of BI have been identified on which work is going on such as persona based analysis, predictive analysis, fraud/ anomaly detection, statistical scoring, 360-degree view of taxpayers, circular trading & network analysis, etc.

➢ Comparison of GSTR-1 & GSTR-3B for liability analysis, GSTR-2A & GSTR-3B for comparison of ITC being claimed by taxpayers, and analysis regarding taxpayers who have generated e-way bill but not filed tax returns is being done and the reports generated are shared with tax authorities for taking appropriate action.

[PIB dated 08.02.2019]

❖ **Details of supplies to unregistered person in GSTR-3B and GSTR-1**

➢ Apportionment of IGST collected on inter–State supplies made to unregistered persons in the State where such supply takes place is based on the information reported in Table 3.2 of Form GSTR-3B by the registered person. Non-mentioning of the said information results in –

- non-apportionment of the due amount of IGST to the State where such supply takes place; and

- a mismatch in the quantum of goods or services or both actually supplied in a State and the amount of integrated tax apportioned between the Centre and that State, and consequent non-compliance of sub-section (2) of section 17 of the Integrated Goods and Services Tax Act, 2017.

➢ Registered persons making inter-State supplies to unregistered persons are required to report the details of such supplies along with the place of supply in Table 3.2 of Form GSTR-3B and Table 7B of Form GSTR–1 as mandated by the law.

➢ Contravention would attract penalty u/s 125 of CGST Act, 2017.

[Circular No. 89/08/2019-GST dated 18.02.2019]

❖ **Place of supply along with name of State in a tax invoice**

➢ All the registered persons making supply of goods or services or both in the course of inter-State trade or commerce shall specify the place of

www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-89.pdf;jsessionid=EF86CDCDF41D21F32F3CFA9250C45B40

Circular No. 89/08/2019-GST

F. No. CBEC-20/16/04/2018 - GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
***

New Delhi, Dated the 18th February, 2019

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax (All)

The Principal Director Generals / Director Generals (All)

Madam/Sir,

Subject: Mentioning details of inter-State supplies made to unregistered persons in Table 3.2 of FORM GSTR-3B and Table 7B of FORM GSTR-1 – Reg.

supply along with the name of the State in the tax invoice. The provisions of sections 10 and 12 of the Integrated Goods and Services Tax Act, 2017 may be referred to in order to determine the place of supply in case of supply of goods and services respectively.

[Circular No. 90/09/2019-GST dated 18.02.2019]

❖ **One-time exception**

➢ As per Circular No. 3/1/2018-IGST dated 25.05.2018, from 1st of April, 2018 the supply of warehoused goods before their clearance from the warehouse would not be subject to the levy of integrated tax.

➢ It has been brought to notice of the Board that, due to non-availability of the facility on the common portal during the period from 1st of July, 2017 to 31st of March, 2018, suppliers have reported the above mentioned supplies as intra-State supplies and discharged central tax and state tax on such supplies instead of integrated tax.

➢ It has been decided that one-time exception shall be provided to the suppliers who have paid central tax and state tax on such supplies, during the said period and would be deemed to have complied with the provisions of law as far as payment of tax on such supplies is concerned as long as the amount of tax paid as central tax and state tax is equal to the due amount of integrated tax on such supplies.

[Circular No. 91/10/2019-GST dated 18th February, 2019]

ecure www.cbic.gov.in/resources//htdocs-cbec/gst/circular-cgst-90.pdf;jsessionid=40C0C744EECF4CC1E1E9EC9FC3C67C51

Circular No. 90/09/2019-GST

or services or both, this is ensured by capturing the details of the place of supply along with the name of the State in the tax invoice.

4. It is therefore, instructed that all registered persons making supply of goods or services or both in the course of inter-State trade or commerce shall specify the place of supply along with the name of the State in the tax invoice. The provisions of sections 10 and 12 of the Integrated Goods and Services Tax Act, 2017 may be referred to in order to determine the place of supply in case of supply of goods and services respectively. Contravention of any of the provisions of the Act or the rules made there under attracts penal action under the provisions of sections 122 or 125 of the CGST Act.

❖ **Extension in due date of Form GSTR-3B**

➢ CBIC has extended the due date of filing of return in Form GSTR-3B for the month of January, 2019 up to 22.02.2019.

➢ However, for registered persons whose principal place of business is in the State of Jammu and Kashmir the last date shall be 28.02.2019.

[Notification No. 09/2019 – Central Tax dated 20th February, 2019]

❖ **New functionalities on GST portal**

➢ System-generated acknowledgement of application of appeal

- Application for appeal has to be submitted by the taxpayer to the First Appellate Authority.

- If Appellate Authority fails to issue final acknowledgment to the appellant within stipulated time, then a system-generated final acknowledgement will be issued to the appellant with remarks "subject to validation of certified copies".

➢ Population of data from EWB system into Form GSTR-1

- At the time of generating e-way bill for outward supply, taxpayer enters the detail of outward supplies such as Invoice number, Date, Value Tax etc.

- Taxpayers can now easily import these details of outward supply invoices, as indicated in the e-way bill, at the time of preparation of Form GSTR-1, by clicking the "Import EWB Data" button, on the GST Portal in following tiles:

  ✓ B2B Invoices

  ✓ B2C (Large) Invoices

  ✓ HSN-wise-summary of Outward Supplies

(Dr Sanjiv Agarwal is Partner, Agarwal Sanjiv & Company, Jaipur.)

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