

**GOVERNMENT OF WEST BENGAL  
DIRECTORATE OF COMMERCIAL TAXES  
14, BELIAGHATA ROAD, KOLKATA-700015**

**TRADE CIRCULAR No. 03/2020**

*(Corresponding Central Circular No. 132/2/2020-GST)*

**DATED: 21.04.2020**

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

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 West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as the “WBGST 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, in exercise of its powers conferred by section 168 of the WBGST 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 WBGST Act. 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 West Bengal Goods and Services Tax Rules, 2017 which reads as follows:—

*“109A. Appointment of Appellate Authority.- (1) Any person aggrieved by any decision or order passed under this Act or the Central Goods and Services Tax Act may appeal to*

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- (a) *the Special Commissioner (Appeals) where such decision or order is passed by the Additional Commissioner,*
  - (b) *the Additional Commissioner (Appeals) where such decision or order is passed by the Senior Joint Commissioner,*
  - (c) *the Additional Commissioner (Appeals) or the Senior Joint Commissioner (Appeals) where such decision or order is passed by the Joint Commissioner,*
  - (d) *the Senior Joint Commissioner (Appeals) or the Joint Commissioner (Appeals) where such decision or order is passed by Deputy Commissioner, Assistant Commissioner or State Tax Officer,*
- 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 Deputy Commissioner or Assistant Commissioner or State Tax Officer, appeal has to be made to the Senior Joint Commissioner (Appeals) or the Joint Commissioner (Appeals). Further, if the order has been passed by Joint Commissioner, appeal has to be made to the Additional Commissioner (Appeals) or the Senior Joint Commissioner (Appeals), if the order has been passed by the Senior Joint Commissioner, appeal has to be made to the Additional Commissioner (Appeals), and if the order has been passed by Additional Commissioner, appeal has to be made to the Special Commissioner (Appeals).

**4.1** The appeal against the order passed by appellate authority under Section 107 of the WBGST Act lies with appellate tribunal. Relevant provisions for the same is mentioned in the Section 112 of the WBGST 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 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 Madras High Court in case of Revenue Bar Assn. v. 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 Governor, on the recommendations of the Council, has issued **the West Bengal Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 vide Notification No. 1993-F.T. dated 12.12.2019**. 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.** Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Commissioner.

**6.** This Trade Circular shall be deemed to have come into force on 18<sup>th</sup> March, 2020.

Sd/-  
(Devi Prasad Karanam)  
Commissioner, State Tax,  
West Bengal

Memo. – 126 CT/PRO  
3C/PRO/2020

Date: 21.04.2020

Copy forwarded to the Additional CST/ISD for information and for uploading it on the official website of the Directorate for information of all concerned.

Sd/-  
(Nabanita Paul)  
Additional CST & PRO