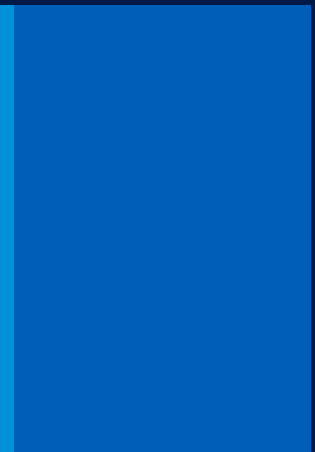




exceeding expectations
since 1985



Powers of Officers during Investigation

- **Search**
- **Seizure**
- **Summon persons to give evidence and produce documents**
- **Detention and Arrest**
- **Power to seek deposits during investigation before issuance of show cause notice**

Power of Inspection: [Section 67 of CGST Act]

- Where the proper officer has 'reason to believe' that:
 - There is suppression of transaction relating to 'supply'; or
 - Inadmissible input tax credit has been claimed; or
 - Contravention of provision of the act or rules to evade tax; or
- Inspection of 'place of business' of:
 - Taxable Person;
 - Transporter;
 - Owner or operator of a warehouse / godown;
 - Any other place

Power of Inspection: [Section 68 of CGST Act]

Inspection of 'goods in movement':

- Person in charge of conveyance carrying goods may be required to carry specified documents/devices
- Verification of documents/device by proper officer;
- E-way bill?

Search & Seizure of goods/documents: [Section 67 of CGST Act]

- Where the proper officer has 'reason to believe':
 - That goods are liable for confiscation; or
 - Any documents or books or things are useful/relevant to any proceedings
- An order for non-removal or parting with goods may be given to the owner
- Documents/books may be retained 'only' for so long as may be necessary for examination and for inquiry/proceedings
- Revenue officers may purchase goods/services from the business premises of a taxable person to check proper issuance of invoices. On return of such goods, the taxable person shall cancelation the invoice and refund the amount paid [Section 67(12)]

Seizure: Issues

- Can laptops/ desktops be seized?
- Are individual employees obliged to give their passwords which will enable the investigating officers to access emails or network or servers located outside India of the company?
- Can emails recovered from computers be relied upon by the department?
- Is assessee entitled to take copies or backups of the seized computers?
- Return of non-RUDs

Power to Summon Persons: [Section 70 of CGST Act]

Summon Persons:

- Proper Officer can summon any person
- Attendance is considered necessary in any enquiry under the Act for:
 - Giving evidence
 - Produce document or thing in possession or under control of person
 - May be specific document or thing or
 - All documents or things of certain description

'Reason to believe' – unfettered powers?

Does not mean subjective satisfaction of officer concerned. It is not arbitrary power given to an officer.

Tata Chemicals Ltd. - 2015 (320) E.L.T. 45 (S.C.)

Such reasons can be recorded on file and Court can scrutinize them.

Agarwal Iron Industries - 2014 (310) E.L.T. 226 (S.C.)

Propriety of belief or sufficiency of material is irrelevant for court if some material existed on which belief could be formed.

Gopaldas Udhavdas Ahuja - 2004 (176) E.L.T. 3 (S.C.)

Power to Arrest: [Section 69 of CGST Act]

- When a person can be arrested:
 - Where Commissioner has 'reason to believe' that any person has committed any of the following offence punishable under section 132(1)(d):
 - A taxable person supplies any goods/services without any invoice or issues a false invoice
 - He issues any invoice or bill without supply of goods/services in violation of the provisions of GST
 - He collects any GST but does not pay it to the government within 3 months
 - Even if he collects any GST in contravention of provisions, he still has to deposit it to the government within 3 months. Failure to do so will be an offense under GST
 - He has already been convicted of an offence earlier u/s 132 i.e., this is his 2nd offense
- Pecuniary Threshold (Section 132)

Power to Arrest: Before Adjudication?

- Presumption of guilt
- Power to be used with circumspection and not casually
- Person sought to be arrested has to be given opportunity to explain materials and circumstances gathered against him
- Adjudication to precede prosecution
- Habitual evader of tax
- Tool for getting 'voluntary deposit' during investigation

- *Makemytrip (India) Pvt. Ltd. – Delhi High Court 2016 (44) S.T.R. 481 (Del.)*

Offences & Penalties

- Twenty-one offences covered for imposition of penalty – Section 122 & Section 132
- Penalties:
 - For any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax – Rs. 10,000/- or 10% of tax due, whichever is higher;
 - For reason of fraud or any wilful misstatement or suppression of facts to evade tax – Rs. 10,000/- or the tax due from such person, whichever is higher
- Penalties for other offences like abetment, dealing with tainted goods in any manner, fails to appear on issuance of summons, fails to issue invoice – Rs 25,000/-

General disciplines related to penalty: For Officers – Section 126

Minor Breaches – No penalties:

- Where tax amount is less than 5,000/-
- If the mistake committed by the person is easily rectifiable

Audi Alterm Partem - No penalty without opportunity of being heard

Speaking Order - Order imposing penalty must specify the nature of breach and applicable law

Voluntary Disclosure - Mitigating factor – Discretion and subjectivity?

Eyewash - Section applies only when penalty is not fixed as a sum or percentage

Prosecution - Section 132

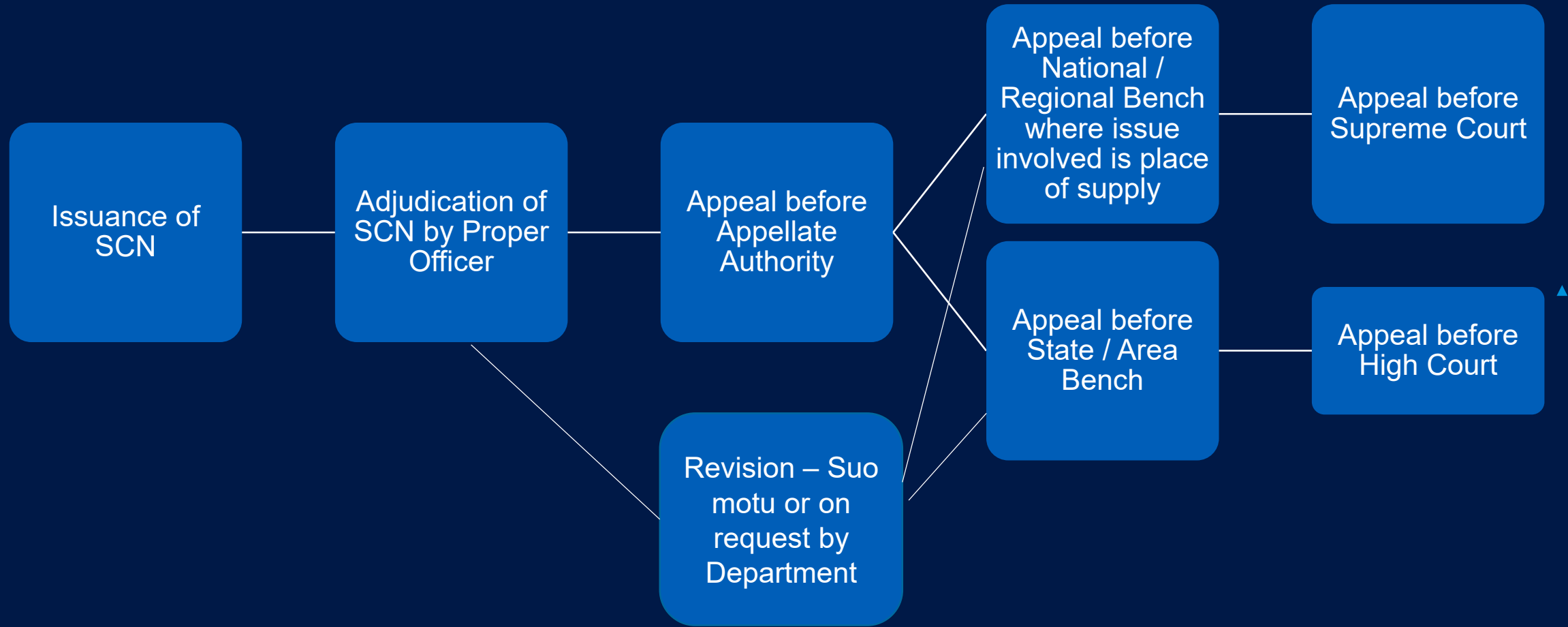
- Offences specified
- Certain offences made cognizable and non-bailable – 50 lacs:
 - Supply goods or services in violation of provisions of Act with intent to evade tax
 - Issue invoice or bill without supply of goods or services leading to wrongful availment/utilization of credit
 - Avail input tax credit using invoice referred to in (b) above
 - Collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due

Tax amount involved	100-200 lakhs	200-500 lakhs	Above 500 lakhs
Jail term	Upto 1 year	Upto 3 years	Upto 5 year
Fine	In all three cases		

Other Provisions

- Prosecution - Presumption of culpable mental state – Section 135
 - Rebuttable presumption against the person accused;
 - Standard of proof to rebut presumption – Beyond reasonable doubt
- Offences by companies – Section 137
 - Person in-charge/responsible at the time of commission
- Compounding of offences – Section 138
 - Before or after institution of prosecution on payment of compounding amount
 - Allowed only after payment of tax, interest and penalty
 - Not allowed in all cases

Stages of Adjudication



Issuance of Show Cause Notice and Adjudication

Activity	Normal Period of Limitation	Extended Period of Limitation
Provision	Section 73	Section 74
Situation for Issuance	Normal cases where tax is recoverable	Cases involving fraud; wilful-misstatement, suppression. <i>Suppression means non-declaration of facts / information that are required to be declared in returns; statements, etc, or failure to furnish information on being asked for. (Mens rea not required?)</i>
Limitation	At least 3 months prior to 'last date of issuance of order'	At least 6 months prior to 'last date of issuance of order'
Time Limit for Adjudication/ Last date for Order	3 years from the last date of filing annual return (31 st December). If not adjudicated within the time limit, the proceedings would be deemed to be concluded.	5 years from the last date of filing annual return (31 st December). If not adjudicated within the time limit, the proceedings would be deemed to be concluded.
Settlement before issuance of SCN	Payment of tax + interest before issuance of SCN. No penalty payable.	Payment of tax + interest along + penalty equivalent to 15% of tax before issuance of SCN.

Activity	Normal Period of Limitation	Extended Period of Limitation
Settlement before Adjudication	Payment of tax + interest within 30 days of the notice. No penalty payable.	Payment of tax + interest along + penalty equivalent to 25% of tax within 30 days.
Settlement after Adjudication	-	If the assessee pays tax + interest + 50% of penalty within 30 days of order, the proceedings would be deemed to be concluded.

Revision of Orders (Section 108)

- Where any order has been passed by an officer sub-ordinate to the Commissioner, the Revisionary Authority (RA) may stay the operation of such order if the same is prejudicial to the interest of revenue, or illegal or based on incorrect facts and pass a revised Order.
- Application for Revision- RA by its own motion or request by the Commissioner
- Revision is not permitted in following cases:
 - Order is already subject to an appeal;
 - Limitation to file appeal before Appellate Authority has not expired
 - More than 3 years have expired of passing of the Order
 - Order is already subject to Revision at the earlier stage
 - The Order is a Revision Order
- Exception: Where any issue has not been raised/decided in appeal before the appellate authority, RA may pass an order on such issue within 1 year from the appellate order or 3 years from the date of the original order, whichever is later.

Appeal to Appellate Authority (Section 107)

Limitation Period

- Appeal by assessee: 3 months from date of receipt of Order
- Appeal by Department: 6 months from date of receipt of Order
- Period may be extended by one month for sufficient cause

Time Limit for passing the Order

- One year from the date of appeal, wherever possible

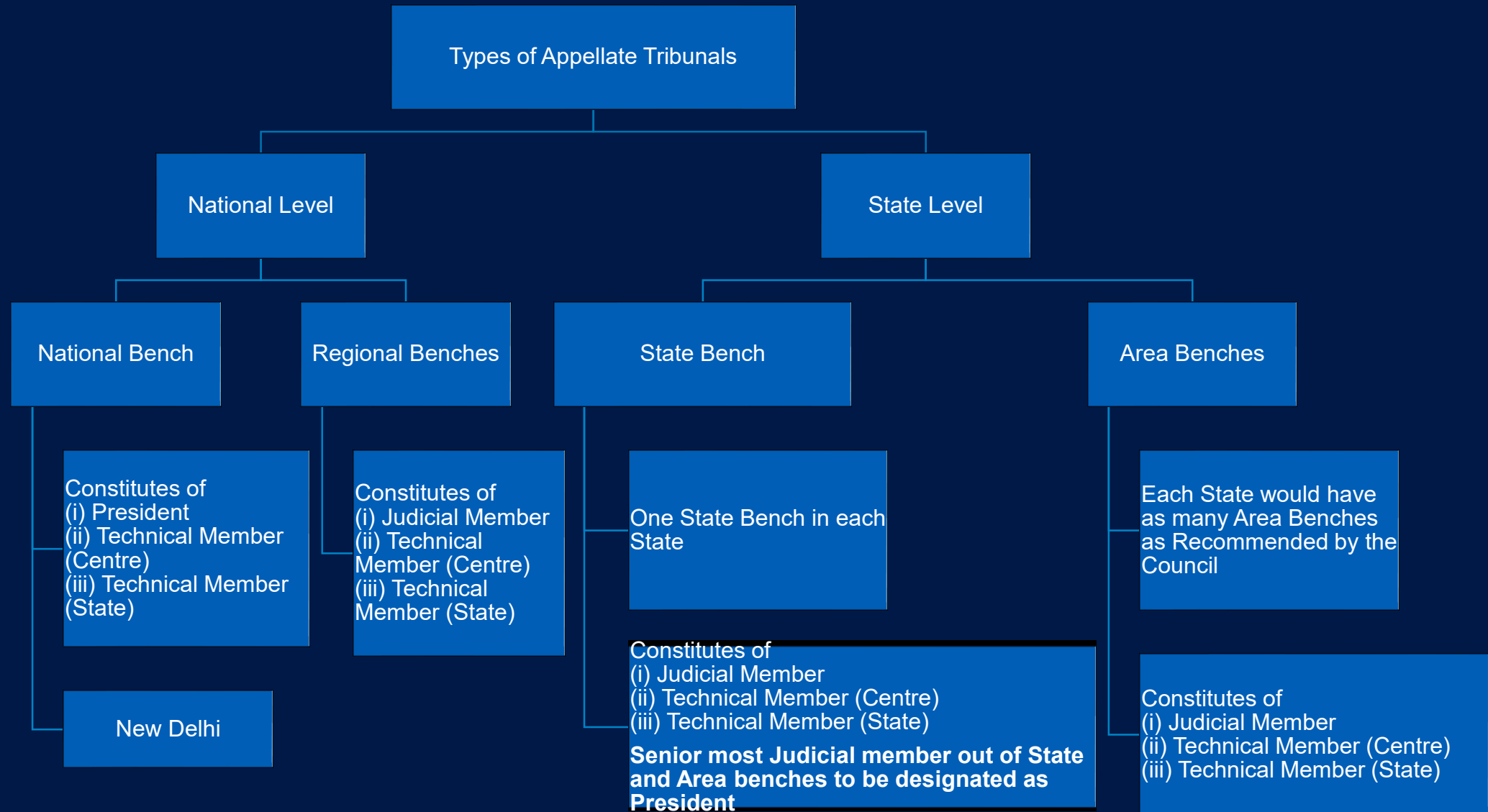
Pre-Deposit

- Any amount admitted by him, in full; and
- 10% of the remaining amount of tax in dispute. Balance amount shall be deemed to be stayed

Appealable Orders

- No power to remand
- All orders or decisions passed by the Adjudicating Authority are appealable, except the following:
 - Order by Commissioner/other authorized authority for transfer of proceedings;
 - Order pertaining to seizure or retention of books of accounts, register and other documents;
 - Order sanctioning prosecution;
 - Order permitting payment in instalments (Section 80)

Appellate Tribunal



Qualification of Members of Appellate Tribunal

President

- 'Has been' a Judge of SC; or
- 'Is or has been' the Chief Justice of HC; or
- 'Is or has been' a Judge of HC for minimum 5 years
- Tenure – three years or seventy years, whichever is earlier. Eligible for re-appointment

Judicial member

- 'Has been' a Judge of HC; or
- 'Is or has been' a District Judge qualified to be appointed as a Judge of HC; or
- 'Is or has been' a member of Indian Legal Services and has held a position not less than Additional Secretary for 3 years
- No appointment from Bar?
- Tenure – three years or sixty five years, whichever is earlier. Eligible for re-appointment

Technical Member (Centre)

- 'Is or has been' a member of IRS (Customs and CE), Group A with minimum 15 years service
- Tenure – Five years or sixty five years, whichever is earlier. Eligible for re-appointment

Technical Member (State)

- Officer of State Govt. not below the rank of Additional Commissioner of VAT or State GST or as otherwise notified by State Govt with recommendations of Council with atleast 3 years of experience in administration of existing law or SGST or ST or finance and taxation

Appeal to Appellate Tribunal (Section 112)

Limitation Period

- Appeal by assessee: 3 months from date of communication of Order
- Appeal by Department: 6 months from date of Order

Time Limit for Adjudication

- One year from the date of appeal, wherever possible

Pre-Deposit

- Any amount admitted by him, in full; and
- Additional 20% of the remaining amount of tax in dispute

Appeal to High Court (Section 117)

Appealable Order

- Passed by State Bench or Area Bench
- No power to grant stay from recovery. Inherent powers to be invoked?

Limitation Period

- 180 days from date of receipt of Order, extendable for sufficient cause

Issue in Appeal

- Appeal must carry question of law and would be heard only to such extent
- High Court can determine any issue not determined or wrongly determined by the State/Area Bench.

Bench

- Appeal will be heard by a Bench of not less than 2 Judges

Appeal to Supreme Court (Section 118)

Appealable Order

- Passed by High Court
- Passed by National Bench or Regional Bench
- No power to grant stay from recovery. Inherent powers to be invoked?

Limitation Period

- 60 days from date of receipt of Order, extendable for sufficient cause

Recovery Proceedings (Section 78, 79)

Recovery proceedings

- To be initiated if amount determined as payable under any Order not paid within 3 months from the date of service;
- May be initiated prior to 3 months, if considered necessary by the proper officer

Manner of Recovery

- Deduction from any amount payable to the assessee;
- Detention and sale of goods belonging to the assessee which are under the control of the proper officer
- Recovery from any person from whom money is due to the assessee
- Distraint and detention of any movable or immovable property of the assessee
- Certificate for recovery to be sent to the Collector where assessee owns any property or resides or carries on business
- Application before the Magistrate for carrying on recovery proceedings

Non-Appealable Orders (Section 121)

- Order by Commissioner/other authorized authority for transfer of proceedings
- Order pertaining to seizure or retention of books of accounts, register and other documents;
- Order sanctioning prosecution
- Order permitting payment in instalments (Section 80)

Advance Ruling

- Meaning: A decision provided by the Authority or the Appellate Authority to an applicant on matters relating to any supply being undertaken or proposed to be undertaken
- Applicant: Any registered person, or one desirous of obtaining registration under this Act
- Constitution: To be constituted under the SGST and UGST Acts and shall comprise of:
 - One member each from Officers of Central and State Tax.
- Orders of Advance Ruling:
 - Binding on the Applicant and Concerned / Jurisdictional Officer
 - Orders Appealable before Appellate Authority within 30 days of receipt (extendable to further 30 days)

Advance Ruling

- Issues eligible for Advance Ruling

Classification

Applicability of
Notification

Time and value
of supply

Admissibility of
ITC

Liability to pay
tax

Requirement of
registration

Qualification as
'supply'

Areas of Dispute- Points to Ponder

- Binding nature of Orders of State / Area Benches of Appellate Tribunal
- Binding nature of Orders of National Tribunal on an issue other than place of supply on State/Area Benches of Appellate Tribunal.
- Same issues (other than place of supply) may go to High Court and Supreme Court owing to jurisdiction of National Tribunal on 'place of supply' issue.

Thank You