

Love for ongoing legacy practices in Appeals



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The human evolution theory talks about how the human body has evolved from time to time by picking up various traits in order to survive within the changing environment. According to the theory, the strongest are those who are adaptable to the change.

However, it feels like the GST lawmakers and authority are still not aware of the theory of evolution. This is the reason why despite the constant efforts of the Government to create awareness on the E-governance, still the authority and the lawmakers have not adapted to the changes and have restrained themselves from adopting the concept of E-filing of documents entirely. Therefore, at present there exists certain provisions in GST Act, where still manual (as per the department officers) submission of the documents is also required, even after the facility for the same is available on the Common GST Portal. It feels like the lawmakers and the authorities are not so confident on adopting the electronic mechanism entirely.

Section [107](#) of the Central Goods and Services Tax Act, 2017 (CGST Act), allows the person aggrieved from the order passed or decision made by the Adjudicating Authority to file an appeal before the prescribed Appellate Authority. The procedure to file an appeal is prescribed in Rule 108 of the Central Goods and Services Tax Rules, 2017 (CGST Rules). As per Rule 108, the aggrieved person is required to appeal in FORM GST APL-01 along with relevant documents either electronically or in other way as notified by the Commissioner. However, only a provisional acknowledgment is generated on online submission. In order to obtain the acknowledgment, the applicant is required to submit the certified copy of the order or the decision within 7 days of the online submission. The relevant extract of the provision is provided hereunder for the reference:

"Rule 108. Appeal to the Appellate Authority.-

- (1) An appeal to the Appellate Authority under sub-section (1) of section 107 shall be filed in **FORM GST APL-01** , along with the relevant documents, either electronically or otherwise as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.*
- (2) The grounds of appeal and the form of verification as contained in **FORM GST APL-01** shall be signed in the manner specified in rule 26 .*
- (3) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in [FORM GST APL-02](#) by the Appellate Authority or an officer authorised by him in this behalf:*

Provided that where the certified copy of the decision or order is submitted within seven days from the date of filing the [FORM GST APL-01](#) , the date of filing of the appeal shall be the date of the issue of the provisional acknowledgement and where the said copy is submitted after seven days, the date of filing of the appeal shall be the date of the submission of such copy.

Explanation. *-For the provisions of this rule, the appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number, is issued."*

It is important to note that in the above provision, nowhere it is mentioned that there should be a physical manual filing of the certified order along with the copy of appeal. The provision merely says that certified copy of the order has to be filed. Before, getting into this, let us first analyse whether this filing itself is required or not.

Therefore, the question that arises from the above is whether the additional step of submission of certified copy of the order or decision is even required when the appeal itself is being submitted against the order no. on the GST Portal. To elaborate the above let's go through how the filing of appeal actually takes place on the GST Portal.

First Step: Log in to the portal and go to the tab My Applications under the Service Tab. Afterward click on New Application.

Second Step: Fill in the details of the order against which the appeal is to be filed and click on search. The portal will display all the details of the order against which the applicant is required to file an appeal and thereafter the applicant can submit all the appeal in the FORM GST APL-01 along with all the relevant documents.

As evident from above steps described, the mechanism of filing of the appeal online is structured in such a way that the appeal will be filed along with the details of the order against which the Appeal is to be filed. Therefore, the requirement of submission of certified copy of the order serves no purpose other than giving a reason to the Authorities to reject the appeal on the non-compliance of the submission which itself is non-sensical. Since the entire mechanism of GST is based entirely on online portal, even the order is available online for the taxpayers and the GST authorities to download. Therefore, with the availability of the order available on the GST Portal itself, there appears no such requirement for the order to be certified and filed later after filing the appeal online. The fact is that the lawmakers while drafting the GST Act have carried forward the same legacy which were present in the earlier regime.

In the old tax regime, there was no concept of doing everything online. In the old regime, everything proceeded with the physical submission of the documents in the department, as there was absence of any online mechanism. Since, there was no online mechanism, therefore there was absence of maintenance of documents on the internal server of the department and everything was recorded in the stacks of the huge paperwork and files. That is why, for the ease of the department it was mandatory to submit the certified copy of the Order along with filing of the appeal. The submission of 'Certified' copy of the order was also mandatory in order to avoid any opportunity of tweaking and changing the facts in the order passed. The physical submission of the order in the older regime was born out of the absence of online mechanism. However, this is not the case in GST, since there is an availability of well functionable portal from which the records can be fetched without any extra effort, without looking into the huge stacks of the papers. The lawmakers have seemed to have forgotten this aspect of the GST law.

As if the, additional step wasn't enough, another problem is added by the practice followed in different Commissionerates in the department. The sub-rule 3 of Rule 108, just states the fact over the requirement to submit the certified copy but it doesn't specify the way it is supposed to be submitted. Since, there is no specific mention of physical submission, for the ease of the applicant, the certified copy of the order can also be submitted along with the appeal at the time of filing of the Appeal. However, it seems that the department is still in the delusion of the fact that nothing has changed with GST. The department authorities, have their own assumptions and interpretations on the provisions, and that is why sometimes they even end up rejecting the appeal in case the applicant has submitted the certified copy of the order at the time of filing application online, on the grounds of procedural lapse or even when certified copy is not submitted at all. Moreover, the third problem here is that, the law even does not specify whether the certified copy has to be department certified or self-certified. Due to this, different practices are being followed in different jurisdictions and accordingly the authorities get a one point program of rejecting the appeals merely on own whims and fancies.

The question here is, if the applicant has submitted the copy of order online and is complying with the requirements of submission, then how can the departmental authority reject the application on the grounds of procedural lapse, if its them who are still abiding with the old practices and the assessee has updated itself according to law.

Another question that comes to the mind while talking about all of this is, can my Right to appeal be denied on the grounds of the Procedural Lapse, the one which is born out of the own interpretations of the department authorities

Even Supreme court is promoting the authorities to go paperless, however it seems that they are still living in the illusion of Past. In the recent direction, Supreme Court has directed all the tax authorities to adapt digital filings in all appeals and pending cases across courts in India. The apex court has allowed a deadline of three months to implement the decision.

In fact, GST is a green field institution, because the very idea of enabling everything online was to go paperless. Even with the availability of the mechanism, still the old practices are being followed as if it is some superstitious ritual.

Sadly, it is only the GST Department where the physical submission is required. Even the Income Tax Department has updated themselves with the passing of time and has made everything online. Under Income Tax Act, 1961 Form 35 allows the assessee to file an appeal online and unlike GST provisions, there is no concept of provisional acknowledgment. Meaning thereby that the appeal submission is complete at the online platform only and there is no additional step of submitting the documents physically.

It feels like when some of the authorities have adapted to the concept of going paperless in order to move forward with the new digital world, it is the GST Authority and its lawmakers who are still reluctant to move forward in digital mode. Another sad side of this whole process is that due to all of these interpretations of the provisions, a lot of confusion arises, and it's the aggrieved person who has to suffer in the entire process when the appeal gets rejected by the authority.

It is high time that the authorities and the lawmakers, start making a step forward along with the digital change and give encouragement to going paperless in the litigation process.

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