

DESAI SAKSENA & ASSOCIATES

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Friday Tax Alert

From:

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Central Board of Indirect Taxes and Custom fixed a monetary limit for filing an appeal/Application by Department before GSTAT, High Court and Supreme Court.

- Section 120 of the Central Goods and Services Tax Act, 2017- **Appeal not to be filed in certain cases:**
- *The Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter.*
 - *Where, in pursuance of the orders or instructions or directions issued under sub-section (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of the central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.*
 - *Notwithstanding the fact that no appeal or application has been filed by the officer of the central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of the central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.*
 - *The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the officer of the central tax in pursuance of the orders or instructions or directions issued under sub-section (1).”*
- Accordingly, in the exercise of the powers conferred by section 120 of the CGST Act read with section 168 of the CGST Act, the Board on the recommendation of the GST Council **fixed the following monetary limit below which the Central Tax Officers shall not file an appeal or application or Special Leave Petition as the case may be**, before, Goods Services Tax Appellate Tribunal (GSTAT), High Court and Supreme Court under the provision of CGST Act, subject to the exclusion mentioned below:

Appellate Forum	Monetary Limit (Amount in Rs.)
GSTAT	20,00,000/-
High Court	1,00,00,000/-
Supreme Court	2,00,00,000/-

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➤ While determining whether a case falls within the above monetary limits or not, the following principles are to be considered:

- Where the dispute pertains to the **demand of tax** (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing an appeal.
- Where the dispute pertains to the **demand of interest** only, the amount of interest shall be considered for applying the monetary limit for filing an appeal.
- Where the dispute pertains to the **imposition of penalty** only, the amount of penalty shall be considered for applying the monetary limit for filing an appeal.
- Where the dispute pertains to the **imposition of a late fee** only, the amount of late fee shall be considered for applying the monetary limit for filing an appeal.
- Where the dispute pertains to demand of **interest, penalty and/or late fee** (without involving any disputed tax amount), the aggregate of amount of interest, penalty and late fee shall be considered for applying the monetary limit for filing an appeal.
- Where the dispute pertains to an **erroneous refund**, the amount of refund in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) shall be considered for deciding whether an appeal needs to be filed or not.
- Monetary limit shall be applied on the disputed amount of tax/interest/penalty/late fee, as the case may be, in respect of which appeal or application is contemplated to be filed in a case.
- In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount of tax/interest/penalty/late fee, as the case may be, and not on the amount involved in individual appeal or demand notice.

➤ **EXCLUSIONS**

The Monetary limits set for filing an appeal or application by the department before GSTAT or High Court as well as for filing Special Leave Petition or appeal before the Supreme Court shall be applicable in all cases. However, there are specific circumstances where the decision to file an appeal shall be taken on merits irrespective of the said monetary limits:

- Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India; or

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- Where any Rules or regulations made under CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act; or
 - Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or the Rules made thereunder; or
 - Where the matter is related to -
 - i. Valuation of goods or services; or
 - ii. Classification of goods or services; or
 - iii. Refunds; or
 - iv. Place of Supply; or
 - v. Any other issue,which is recurring in nature and/or involves interpretation of the provisions of the Act /the Rules/ notification/circular/order/instruction etc; or
 - Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or
 - Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.
- It is pertinent to mention that an appeal should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. The decision to file an appeal in such instances should be made based on the merits of the case. The officers concerned shall keep in mind the overall objective of reducing unnecessary litigation and providing certainty to taxpayers on their tax assessment while taking a decision regarding filing an appeal.
- Please take note of sub-sections (2), (3) & (4) of section 120 of the CGST Act, which specify that in cases where it is decided not to file an appeal in pursuance of these instructions, such cases shall not have any precedent value. In such cases, the Reviewing Authorities shall specify that *“even though the decision is not acceptable, the appeal is not filed as the amount involved is less than the monetary limit fixed by the Board.”*
- Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing the appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit or case involving the questions of law.
 - Further, it is re-iterated that in such cases where the appeal is not filed solely on the basis of the above monetary limits, there will be no presumption that the Department has accepted the decision on the disputed issues in the case of the same taxpayers or in case of any other taxpayers. Therefore, if a taxpayer

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cites or relies on any previous order claiming it was accepted by the Department, it should be verified whether acceptance was solely due to the monetary limit before following them in the interest of judicial discipline.

- Also, in respect of such cases where no appeal is filed based on the monetary limit, the Departmental representatives/counsels must make every effort to bring to the notice of the GSTAT or the Court, as the case may be, that the appeal in such cases was not filed only for the reason of the amount of the tax in dispute being less than the specified monetary limit and, therefore, no inference shall be drawn that the decisions rendered therein were acceptable to the Department. Accordingly, they should draw the attention of the GSTAT or the Court towards the provisions of sub-section (4) of section 120 of the CGST Act, 2017 as reproduced above.

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