

NO ORDER, NO APPEAL?

THE LEGAL CONSEQUENCES OF TIME-BAR REJECTIONS THROUGH FORM GST APL-02



CA. Bhavesh Mittal

Partner

HNA & Co. LLP

bhaveshmittal@hnaindia.com



Adv. Alankar Singh Thakur

Manager (Litigation)

HNA & Co. LLP

alankarsingh@hnaindia.com

“A mature GST regime is not one that changes frequently, but one that improves thoughtfully.”

The formal constitution of the Goods and Services Tax Appellate Tribunal (GSTAT) marks an important stage in the evolution of the GST dispute resolution framework. The Tribunal was envisaged as the final fact-finding authority under the GST regime and as a necessary institutional mechanism to streamline Appellate Adjudication. One of the clear objectives behind its establishment was to provide an effective statutory remedy and to reduce the increasing burden on the Hon’ble High Courts in GST matters.

However, an emerging procedural issue threatens to dilute this objective. A large number of appeals filed before the First Appellate Authority under Section 107 of the Central Goods and Services Tax Act, 2017 (“**CGST Act**”) have been rejected on the ground of limitation not by way of a reasoned appellate Order, but merely through issuance of FORM GST APL-02 (Acknowledgment), bearing the endorsement “Rejected being Time Barred”.

This practice raises important questions concerning statutory interpretation, procedural compliance, and the availability of further appellate remedies under Section 112 of the CGST Act.

STATUTORY FRAMEWORK GOVERNING APPEALS

To appreciate the issue, it is necessary to examine the statutory scheme governing appeals under the GST regime.

Relevant provision/ Form	Particulars
---------------------------------	--------------------

Section 107	Appeal to the First Appellate Authority	<p>Section 107 of the CGST Act provides that any person aggrieved by a decision or order passed by an adjudicating authority may prefer an appeal to the Appellate Authority within three months from the date of communication of such decision or order. The Appellate Authority is empowered to confirm, modify, or annul the decision or order appealed against.</p> <p>Sub-section (11) of Section 107 contemplates the passing of an Order after hearing the parties and examining the records. Thus, adjudication by the First Appellate Authority is required to culminate in a Reasoned Order.</p>
Rule 108 and FORM GST APL-02	Procedure for Filing Appeal	<p>Rule 108(3) of the CGST Rules, 2017 provides that where the decision or order appealed against is uploaded on the common portal, a final acknowledgment, indicating the appeal number, shall be issued in FORM GST APL-02 by the Appellate Authority or an authorised officer. The date of provisional acknowledgment is treated as the date of filing of appeal.</p> <p>It is therefore, evident that FORM GST APL-02 is procedural in nature. It acknowledges the filing of an appeal and assigns an appeal number. It does not, by statutory design, embody adjudication and hence, cannot be termed as Order.</p>
Rule 113 and FORM GST APL-04	Order of the Appellate Authority	<p>Rule 113 of the CGST Rules mandates that the Appellate Authority shall, along with its order under Section 107(11), issue a summary of the order in FORM GST APL-04, clearly indicating the final amount of demand confirmed.</p> <p>FORM GST APL-04 is thus the statutory vehicle through which the appellate order is summarised and communicated.</p>
Section 112	Appeal to the Appellate Tribunal	<p>Section 112 provides that any person aggrieved by an Order passed under Section 107 or Section 108 may appeal to the Appellate Tribunal within three months from the date of communication of such order.</p> <p>The right to approach the Tribunal is therefore triggered by the existence of an “Order” passed under Section 107.</p>

THE PROCEDURAL ANOMALY: REJECTION THROUGH APL-02

In practice, numerous appeals filed before the First Appellate Authority have been rejected at the threshold on the ground of limitation by way of an endorsement in FORM GST APL-02 stating "Rejected being Time Barred." No separate Order under Section 107(11) is passed. No FORM GST APL-04 is issued.

This gives rise to a fundamental question:

Can an acknowledgment in FORM GST APL-02, containing a brief endorsement of rejection, be treated as an "Order" passed under Section 107?

A close reading of the statutory provisions suggests that it cannot.

DISTINCTION BETWEEN ACKNOWLEDGMENT AND ADJUDICATORY ORDER

The statutory scheme clearly differentiates between:

An acknowledgment is administrative in character. It records the fact of filing. It does not reflect application of mind, discussion of limitation, consideration of condonation powers, or reasoning.

An adjudicatory order under Section 107(11), on the other hand, is required to contain findings and reasons. Even where an appeal is dismissed as time-barred, such dismissal must emanate from an Order passed in exercise of statutory powers.

In this context, reference may be made to the decision of the Allahabad High Court in ***New Shanti Restaurant v. State of U.P.***, Writ Tax Nos. 1597 with 1604 of 2024, decided on 30.09.2024, wherein it was observed as under:

*"It is settled law that reason is the heartbeat of every conclusion. An order without valid reasons cannot be sustained. **To give reasons is the rule of natural justice. One of the most important aspect for necessitating to record reason is that it substitutes subjectivity with objectivity. It is well settled that not only the judicial order, but also the administrative order must be supported by reasons recording in it.**"*

This precise issue has also engaged the attention of constitutional courts. In ***Jharna Das v. The Joint Commissioner of State Tax, Bureau of Investigation (South Bengal), Durgapur Zone & Ors.***, decided on 14.05.2024 by the Calcutta High Court. The appeal filed under Section 107 was rejected through FORM GST APL-02 on the ground of delay. The Hon'ble Court noted that although the appeal appeared to be barred by time, the petitioner could not have been deprived of the opportunity to seek condonation of delay. The High Court set aside the rejection appearing in FORM GST APL-02 and granted liberty to the petitioner to file an application under Section 5 of the Limitation Act, 1963, directing the Appellate Authority to consider the same in accordance with law.

The above enunciation reinforces the settled principle that even an administrative order must disclose reasons. An endorsement in an acknowledgment format, devoid of reasoning, cannot satisfy this requirement.

The absence of a reasoned order raises two distinct issues:

- 1. Procedural Non-Compliance:** The statutory mandate of passing an order under Section 107(11) read with Rule 113 is not fulfilled.
- 2. Denial of Appellate Remedy:** In the absence of an order under Section 107, Section 112 cannot be effectively invoked.

CONSEQUENCE: ABSENCE OF AN APPEALABLE ORDER

Section 112 permits an Appeal to the Tribunal against an order passed under Section 107. If no order under Section 107 is passed and only an acknowledgment is generated, there is no identifiable order capable of being appealed against.

This creates a legal vacuum. The taxpayer is effectively deprived of the statutory right to approach the Tribunal.

The practical implication is significant. Assesseees whose appeals are rejected through APL-02 have no remedy before the Tribunal because:

- There is no “Order” within the meaning of Section 112.
- There is no APL-04 summarising an order.
- There is no reasoned order under Section 107.

IMPACT ON THE OBJECTIVE OF THE GSTAT

One of the core objectives behind the establishment of the GSTAT was to provide a structured appellate forum and reduce writ litigation before the High Courts.

However, if appeals rejected as time-barred through APL-02 cannot be carried to the Tribunal, the affected taxpayers are left with only one recourse: invoking the writ jurisdiction of the Hon’ble High Courts under Article 226 of the Constitution of India.

Instead of reducing the burden on constitutional courts, this procedural approach may result in increased writ petitions seeking:

- Direction to the Appellate Authority to pass a proper order under Section 107;
- Quashing of rejection endorsements in APL-02; or
- Adjudication of limitation issues directly by the High Court.

Such litigation is avoidable if the statutory scheme is adhered to in letter and spirit.

NEED FOR PROCEDURAL CLARITY

The issue is not merely technical. It affects substantive rights. To ensure uniformity and legal certainty, it would be appropriate that:

- 1.** Rejections on limitation grounds are issued only through a reasoned order under Section 107 (11);

2. Such order is summarised in FORM GST APL-04 as mandated by Rule 113; and
3. The right of appeal under Section 112 remains preserved.

Such clarity would prevent procedural disputes from overshadowing substantive adjudication.

CONCLUSION

The constitution of the GST Appellate Tribunal represents an important advancement in the GST framework. Its effectiveness, however, depends upon procedural discipline at every appellate stage.

The practice of rejecting appeals as time-barred through FORM GST APL-02, without issuance of a reasoned order under Section 107, creates uncertainty in law and restricts access to the Tribunal. It may also result in avoidable writ proceedings before the High Courts, contrary to the objective underlying the Tribunal's establishment.

A consistent and legally aligned approach - where every rejection is supported by a formal adjudicatory order - would safeguard statutory rights, ensure procedural uniformity, and strengthen the credibility of the appellate mechanism under GST.

In a regime that aspires to stability and predictability, procedural clarity is not a technical formality; it is the foundation of effective appellate justice.

[The views expressed are strictly personal. For feedback or queries, please write to the authors at bhaveshmittal@hnaindia.com or alankarsingh@hnaindia.com.]