

### Policy for Reduction of Government Litigation

#### [Circular No. 207/1/2024-GST dated 26.06.2024]

#### I. Reduction of Government Litigation – Fixing Monetary Limits for filing appeals.

Under the powers conferred by section 120, Government has chosen to prescribe monetary limits whereby appeals, applicable to special leave petition shall not be filed by Central Tax Officers. Forum and monetary limits are as under:

- **GST Appellate Tribunal : Rs. 20 lakhs**
- **High Court : Rs. 1 crore**
- **Supreme Court : Rs. 2 crores**

#### II. Principles to be followed by department for implementing above monetary limits

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

1. Where the dispute pertains to demand of tax (with or without penalty and/or interest), department has to consider only the GST including Compensation Cess demand amount and disregard the demand of Interest and Penalty, while applying the monetary limit for filing appeal.
2. Where the dispute pertains to demand of interest only, the amount of interest shall be considered for applying the monetary limit for filing appeal.
3. Where the dispute pertains to imposition of penalty only, the amount of penalty shall be considered for applying the monetary limit for filing appeal.



4. Where the dispute pertains to imposition of late fee only, the amount of late fee shall be considered for applying the monetary limit for filing appeal.
5. 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 appeal.
6. Where the dispute pertains to erroneous refund, the amount of total refund in dispute excluding the interest thereon shall be considered for deciding whether appeal needs to be filed or not.
7. In a composite order which disposes more than one appeal/demand notice, the monetary limits shall be applicable on the total amount as discussed above and not on the amount involved in individual appeal or demand notice.

### **III. Situations where monetary limits will not be applicable**

Monetary limits specified above for filing appeals by the department shall not be applicable in following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

1. Where any of the provision of any GST Act has been held to be ultra vires to the Constitution of India.
2. Where any Rules or regulations made under GST Act have been held to be ultra vires the parent Act.
3. Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the GST Act or Rules made there under.
4. Where the matter is related to -
  - a. Valuation of goods or services; or
  - b. Classification of goods or services



- c. Refunds
- d. Place of Supply
- e. 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

- 5. Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or
- 6. 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.

#### IV. Limitations of the Monetary Limit

- 1. Appeals should not be filed merely because the disputed tax amount involved in a case exceeds the monetary limits fixed above. **Filing of appeal in such cases is to be decided on merits of the case.**
- 2. Cases where it is decided not to file appeal in pursuance of these instructions, such cases shall not have any precedent value.
- 3. Non-filing of appeal based on the above monetary limits, shall not preclude the tax officer from filing appeal or application in any other case involving the same or similar issues in which the tax in dispute exceeds the monetary limit.

#### V. Comparison with similar policy in the Central Excise and Service tax regime

- 1. CBIC vide instruction no. F. No. 390/Misc/116/2017-JC, dated 22.08.2019 has prescribed following limits:
  - **CESTAT** : **Rs. 50 lakhs**
  - **High Court** : **Rs. 1 crore**



- **Supreme Court : Rs. 2 crores**

Limit differs substantially with respect to Tribunal, whereas it is same for High Court and Supreme Court.

2. Only exclusions in the old policy were as under:

Adverse judgments relating to the following should be contested irrespective of the amount involved:

- a. Where the constitutional validity of the provisions of an Act or Rule is under challenge.
  - b. Where notification/instruction/order or Circular has been held illegal or ultra vires.
3. Current policy completely differs on the issue of applicability of monetary limit as far as issue of filing appeal in cases involving recurring issues, following is the abstract from Instruction F. No.390/Misc/163/2010-JC, dated 26.12.2014.

*3. It is hereby clarified that the existing Instruction regarding applicability of monetary limits to cases of recurring nature would continue. **Therefore, all cases, including cases of recurring nature, are covered under the Instruction on monetary limits and appeal is not to be filed in such cases except those falling in the two exclusion clauses mentioned above.** Even if an appeal is pending in the higher appellate forum, subsequent case of the same party or other party shall not be pursued further in litigation if the case falls below the monetary limit prescribed by the Board.*

## VI. Conclusion

Biggest litigator by far especially in cases involving tax in India is the Government itself, hence a Litigation reduction policy was the need of the hour, GSTAT is in the process of being formed, hence this policy will be very useful in reducing unnecessary litigation. However, some caveats in this policy like non applicability of this policy in cases which involve interpretation of any provisions of the Act or rules etc, will force the department to file appeals disregarding the



prescribed monetary policy. Almost all litigation involves some sort of interpretation related issue, hence this limitation may cause failure of this policy. Further, both the policies, Old as well as GST one, differ substantially in its applicability, this policy will not meet its intended purpose unless these caveats are removed.

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