

# GOODS AND SERVICES TAX ACT

## PART VIII

### BOARD OF REVIEW

#### **Application for review and revision**

**49.** —(1) Any person may apply to the Comptroller, by notice of objection in writing, for review and revision of any decision made by the Comptroller with respect to any of the following matters:

- (a) the registration or cancellation of registration of any person under this Act;
- (b) the tax chargeable on the supply of any goods or services or on the importation of any goods;
- (c) the amount or proportion of any input tax or interest thereon which may be credited or allowable to a person;
- (d) the proportion of any supplies that is to be taken as consisting of taxable supplies;
- (e) a claim for or the amount of any refunds under section 25;
- (f) any direction or supplementary direction made under paragraph 2 of the First Schedule;
- (g) any direction under paragraph 1 or 2 of the Third Schedule;
- (h) any refusal to permit the value of supplies to be determined by a method described in a notice issued under section 41 (3) (a);
- (i) any requirements imposed by the Comptroller in a particular case under section 43 (2) (b);
- (j) an assessment —
  - (i) under section 45 (1) or (2) in respect of a period for which the appellant has made a return under this Act;
  - (ii) under section 45 (6A) or (8); or
  - (iii) of penal tax under section 48, or the amount of such an assessment;
- (k) the declaration to be the agent of another person under section 79;
- (l) the requirement of any security under section 81 (3);
- (m) a claim for the repayment of an amount under section 90.

(2) Any application for review and revision under this section shall be made within 30 days of the date the person has been notified of the decision to which he objects or such other extended time as the Comptroller may allow.

(3) The Comptroller shall consider the application under subsection (2) and shall, within a reasonable time, inform the person of the decision on the application.

#### **Constitution of Board of Review**

**50.** —(1) For the purposes of hearing appeals, there shall be a Goods and Services Tax Board of Review consisting of not more than 50 members appointed by the Minister to hold office for such period as may be determined by the Minister and shall be eligible for reappointment.

(2) The Minister may at any time remove any member of the Board from office without giving any reason.

(3) A member may resign his office by notice in writing to the Minister.

(4) The Minister may appoint from amongst the members of the Board —

(a) a Chairman of the Board; and

(b) such number of Deputy Chairmen of the Board as the Minister thinks fit.

[Act 50/2004, wef 08/12/2004](#)

(4A) No person may be appointed as Chairman of the Board or Deputy Chairman of the Board unless he is either qualified to be a District Judge or is a public accountant within the meaning of the Accountants Act 2004 (Act 4 of 2004).

[Act 50/2004, wef 08/12/2004](#)

(4B) Meetings of the Board shall be presided by —

(a) the Chairman of the Board;

(b) in the absence of the Chairman of the Board —

(i) where there is only one Deputy Chairman of the Board present, the Deputy Chairman; and

(ii) where there is more than one Deputy Chairman of the Board present, such Deputy Chairman as may be chosen by the Deputy Chairmen present; and

(c) where neither the Chairman of the Board nor any Deputy Chairman of the Board is present, such member of the Board as may be chosen by the members present.

[Act 50/2004, wef 08/12/2004](#)

(5) The Minister may appoint one or more secretaries to the Board and such other officers of the Board as may be necessary.

(6) All the powers, functions and duties of the Board may be exercised, discharged and performed by any committee of the Board consisting of not less than 3 members of the Board, at least one of whom shall be the Chairman of the Board or a Deputy Chairman of the Board.

[Act 50/2004, wef 08/12/2004](#)

(6A) Any act, finding or decision of any such committee shall be deemed to be the act, finding or decision of the Board.

[Act 50/2004, wef 08/12/2004](#)

(7) The secretary shall, from time to time, summon such members of the Board as may be nominated by the Chairman of the Board to constitute a committee of the Board for the purposes of giving effect to the provisions of this Part, and it shall be the duty of such members to attend at the times and place specified in the summons.

[Act 50/2004, wef 08/12/2004](#)

(8) All matters coming before the Board or a committee of the Board at any sitting thereof shall be decided by a majority of votes of the members of the Board present and, in the event of an equality of votes, the Chairman of the Board, the Deputy Chairman of the Board or such other member as may be presiding, as the case may be, shall have a second or casting vote.

[Act 50/2004, wef 08/12/2004](#)

- (8A) Meetings of a committee shall be presided by —
- (a) where the Chairman of the Board is a member of the committee, the Chairman; and
  - (b) where the Chairman of the Board is not a member of the committee and —
    - (i) there is only one Deputy Chairman of the Board on the committee, the Deputy Chairman; or
    - (ii) there is more than one Deputy Chairman of the Board on the committee, such Deputy Chairman as the Chairman may determine.

[Act 50/2004, wef 08/12/2004](#)

- (8B) Where the Chairman of the Board or any Deputy Chairman of the Board, as the case may be, is absent from any meeting of a committee at which he ought under subsection (8A) to be presiding, the meeting shall be presided by —
- (a) where there is only one Deputy Chairman who is a member of the committee present, the Deputy Chairman;
  - (b) where there is more than one Deputy Chairman who is a member of the committee present, such Deputy Chairman as may be chosen by the Deputy Chairmen present; and
  - (c) where there is no Deputy Chairman who is a member of the committee present, such member of the Board as may be chosen by the members present.

[Act 50/2004, wef 08/12/2004](#)

(9) Members of the Board shall be entitled to receive such remuneration and such travelling and subsistence allowances as the Minister may determine.

(10) The Minister may make regulations prescribing —

- (a) the manner in which appeals shall be made to the Board;
- (b) the procedure to be adopted by the Board in hearing appeals and the records to be kept by the Board;
- (c) the places where and the times at which appeals shall be heard by the Board;
- (d) the fees to be paid in respect of any appeal under this Part; and
- (e) the costs in respect of appeals to the Board.

### **Right of appeal**

**51.** —(1) Any person who disagrees with the decision of the Comptroller on his application for review and revision under section 49 may appeal to the Board by —

- (a) lodging with the secretary, within 30 days from the date of the decision of the Comptroller on the application for review and revision, a written notice of appeal in such form as the Board may determine; and
- (b) lodging with the secretary, within 30 days of the date on which such notice of appeal was lodged, a petition of appeal containing a statement of the grounds of appeal.

(2) A notice of appeal shall contain —

- (a) an address for service;
- (b) a list of the names of any members of the Board to whom the appellant objects; and
- (c) the reasons for such objection.

[Act 50/2004, wef 08/12/2004](#)

(2A) An appellant shall not be entitled to object to the Chairman of the Board or any Deputy Chairman of the Board and to more than one-third of the total number of members of the Board.

[Act 50/2004, wef 08/12/2004](#)

(3) On receipt of a notice of appeal, the secretary shall forthwith forward one copy thereof to the Comptroller who may, within 3 days of the receipt of such copy, lodge with the secretary a list of any members of the Board to whom he objects and the reasons for such objection.

[Act 50/2004, wef 08/12/2004](#)

(3A) The Comptroller shall not be entitled to object to the Chairman of the Board or any Deputy Chairman of the Board and the number of members of the Board objected to by the Comptroller shall not, when added to the number objected to by the appellant, exceed one-half of the total number of members of the Board.

[Act 50/2004, wef 08/12/2004](#)

(4) The Chairman of the Board, or such Deputy Chairman of the Board as the Chairman may authorise, shall determine whether the reason for any objection to any member under subsection (2) or (3) is valid.

[Act 50/2004, wef 08/12/2004](#)

(4A) Where the Chairman of the Board or a Deputy Chairman of the Board determines under subsection (4) that the reason for any objection is valid, the member of the Board in respect of whom the objection was made shall not attend the hearing of the appeal of the appellant.

[Act 50/2004, wef 08/12/2004](#)

(4B) Where the Chairman of the Board or a Deputy Chairman of the Board determines under subsection (4) that the reason for any objection is not valid, the Chairman or Deputy Chairman shall reject that objection and inform the appellant or the Comptroller accordingly.

[Act 50/2004, wef 08/12/2004](#)

(4C) Where an objection has been rejected by the Chairman of the Board or a Deputy Chairman of the Board under subsection (4B), the member of the Board in respect of whom that objection was made may attend the hearing of the appeal of the appellant.

[Act 50/2004, wef 08/12/2004](#)

(4D) The decision of the Chairman of the Board or a Deputy Chairman of the Board under subsection (4) shall be final.

[Act 50/2004, wef 08/12/2004](#)

(5) The Chairman of the Board may, in his discretion and on such terms as he thinks fit, permit any person to proceed with an appeal notwithstanding that the notice of appeal or petition of appeal was not lodged within the time limited therefor by this section, if it is shown to the satisfaction of the Chairman that the person was prevented from lodging the notice or petition in due time owing to absence, sickness or other reasonable cause and that there has been no unreasonable delay on his part.

[Act 50/2004, wef 08/12/2004](#)

(6) Except with the consent of the Board and on such terms as the Board may determine, an appellant may not at the hearing of his appeal rely on any grounds of appeal other than the grounds stated in his petition of appeal.

(7) An appeal under this section shall not be heard unless the appellant has made all the returns which he was required to make under this Act and has paid the amounts shown in those returns as payable by him.

(8) Where the appeal is against a decision with respect to any of the matters mentioned in section 49 (1) (b), (j) or (l), it shall not be heard unless —

- (a) the amount which the Comptroller has determined to be payable as tax has been paid or deposited with him; or
  - (b) on being satisfied that the appellant would otherwise suffer hardship, the Comptroller agrees or the Board decides that it should be heard notwithstanding that that amount has not been so paid or deposited.
- (9) Where there is an appeal against a decision to make such a direction as is mentioned in section 49 (1) (f), the Board shall not allow the appeal unless it considers that the Comptroller could not reasonably have been satisfied as to the matters set out in subparagraph (2) or (4), as the case may be, of paragraph 2 of the First Schedule.
- (10) Where on an appeal under this section it is found —
- (a) that the whole or part of any amount paid or deposited under subsection (8) is not due; or
  - (b) that the whole or part of any amount due to the appellant under section 19 (5) has not been paid,
- so much of that amount as is found not to be due or not to have been paid shall be repaid (or, as the case may be, paid).
- (11) Where the appeal has been heard notwithstanding that an amount determined by the Comptroller to be payable as tax has not been paid or deposited and it is found on the appeal that that amount is due, the Board may, if it thinks fit, direct that that amount shall be paid.

#### **Hearing and disposal of appeals**

- 52.** —(1) On receipt of a petition of appeal, the secretary shall forthwith forward a copy thereof to the Comptroller and shall, as soon as is possible, fix a time and place for the hearing of the appeal and shall give 14 days' notice thereof both to the appellant and to the Comptroller.
- (2) The appellant and the Comptroller or an officer authorised by him shall attend, either in person or by an advocate and solicitor or accountant, at such times and places as may be fixed for the hearing of the appeal.
- (2A) Where it is proved to the satisfaction of the Board that, owing to absence, sickness or other reasonable cause, any person is prevented from so attending, the Board may postpone the hearing of the appeal for such reasonable time as it thinks necessary.
- (3) The onus of proving that the decision of the Comptroller on the application for review and revision under section 49 is incorrect shall be on the appellant.
- (4) The Board shall have the following powers:
- (a) to summon to attend at the hearing of an appeal any person whom it may consider able to give evidence in respect of the appeal, to examine such person as a witness either on oath or otherwise and to require such person to produce such records, documents or sample of any goods as the Board may think necessary for the purposes of the appeal;
  - (b) to allow any person so attending any reasonable expenses necessarily incurred by him in so attending; such expenses shall form part of the costs of the appeal and shall be paid by the appellant or the Comptroller, as the Board may direct;
  - (c) all the powers of a District Court with regard to the enforcement of attendance of witnesses, hearing evidence on oath and punishment for contempt; and
  - (d) subject to section 51 (6), to admit or reject any evidence adduced, whether oral or documentary and whether admissible or inadmissible under the provisions of any written law relating to the admissibility of evidence.

- (5) Every person examined as a witness by or before the Board, whether on oath or otherwise, shall be legally bound to state the truth and to produce such records, documents or sample of any goods as the Board may require.
- (6) The costs of an appeal shall be in the discretion of the Board and shall either be fixed by the Board or, on the order of the Board, taxed by the Registrar, Deputy Registrar or an Assistant Registrar of the Supreme Court or the Subordinate Courts in accordance with regulations made under section 50 (10).
- (7) Where the Comptroller is awarded costs of an appeal, he shall be entitled to his reasonable costs of the appeal, including a fee for any counsel or legal officer appearing on his behalf in the appeal, and the amount of such costs shall be added to the tax charged (if any) and be recoverable therewith.
- (8) The Board may, after hearing an appeal, confirm, vary or annul the decision of the Comptroller appealed against and make such order as it thinks fit.
- (9) Where the Board after hearing an appeal does not vary or annul the decision of the Comptroller, the Board may, if in its opinion the appeal was vexatious or frivolous, order the appellant to pay, as costs of the Board and in addition to any costs awarded to the Comptroller, a sum not exceeding \$1,000 which sum shall be added to the tax charged (if any) and be recoverable therewith.
- (10) Every member of the Board, when and so long as he is acting as such, shall be deemed to be a public servant within the meaning of the Penal Code (Cap. 224) and shall enjoy the same judicial immunity as is enjoyed by a District Judge.
- (11) All proceedings in appeals to the Board under this Act shall be deemed to be judicial proceedings within the meaning of the Penal Code.
- (12) Where, on appeal against a decision with respect to any of the matters mentioned in section 49 (1) (j) —
- (a) it is found that the amount specified in the assessment is less than it ought to have been; and
- (b) the Board gives a direction specifying the correct amount, the assessment shall have effect as an assessment of the amount specified in the direction and that amount shall be deemed to have been notified to the appellant.

#### **Hearing of appeal in absence of member of Board**

- 53.** —(1) Notwithstanding anything to the contrary in this Part, if, in the course of any appeal, or, in the case of a reserved judgment in any such appeal, at any time before delivery of the judgment, any member of the Board hearing the appeal is unable, through illness or any other cause, to continue to hear or to determine the appeal, the remaining members of the Board, not being less than 2, shall, if the parties consent, hear and determine the appeal and the Board shall, for the purposes of the appeal, be deemed to be duly constituted notwithstanding the absence or inability to act of the member.
- (2) Notwithstanding section 50 (8), in any case referred to in subsection (1), the appeal shall be decided in accordance with the opinion of the majority of the remaining members of the Board and except where there are only 2 remaining members if there is an equality of votes, the Chairman of the Board or in his absence the member presiding shall have a second or casting vote.
- (3) The appeal shall be reheard —
- (a) if the parties do not consent to the proceedings continuing by the remaining members of the Board under subsection (1); or
- (b) if the appeal is heard or determined by only 2 remaining members of the Board and they are unable to reach a unanimous decision.

### **Appeals to High Court**

- 54.** —(1) Except as provided in this section, the decision of the Board shall be final.
- (2) The appellant or the Comptroller may appeal to the High Court from the decision of the Board upon any question of law or of mixed law and fact except on any case where the Board has determined that the tax payable or any amount due to the appellant is less than \$500 excluding the amount of costs awarded.
- (3) The procedure governing and the costs of such appeals to the High Court shall be the same as for appeals to the High Court from decisions of District Courts in civil matters.
- (4) The High Court shall hear and determine any such appeal and may confirm, vary or annul the decision of the Board on appeal and make such further or other order on such appeal, whether as to costs or otherwise, as to the Court may consider fit.
- (5) There shall be such further right of appeal from decisions of the High Court under this section as exists in the case of decisions made by that Court in the exercise of its original civil jurisdiction.

### **Cases stated for High Court**

- 55.** —(1) The Board may at any time and in regard to any appeal, with or without proceeding to the determination of the appeal, state a case on a question of law for the opinion of the High Court.
- (2) A case stated shall set forth the facts and any finding of fact by the Board, the decision, if any, of the Board, and the question for the opinion of the High Court, and shall be signed by the Chairman of the Board or member presiding or in their absence, by any other member attending the sitting at which the appeal was heard.
- (3) The secretary shall transmit the case, when stated and signed in accordance with subsection (2), to the High Court, and shall send a copy thereof to the appellant and to the Comptroller.
- (4) The High Court may cause a case stated to be returned to the Board for amendment and the Board shall amend the case stated accordingly.
- (5) In considering any case stated, the High Court shall give the appellant and the Comptroller an opportunity to present arguments before the Court.
- (6) The High Court shall hear and determine any question of law arising on a case stated and may in accordance with its decision thereon confirm, vary or annul any decision by the Board in the appeal, or may remit the case to the Board with the opinion of the Court on that case.
- (7) The Board shall give effect to the opinion by its decision in the appeal or by revising any previous decision made by it in the appeal to the extent to which that previous decision does not accord with the opinion of the High Court.

### **Proceedings before Board of Review and Supreme Court**

- 56.** —(1) Subject to subsections (2) and (3), all proceedings before the Board and in appeals to, or in cases stated for the opinion of, the High Court and in appeals from decisions of the High Court under section 54 shall be heard in camera.
- (2) Where the Comptroller or the appellant at the hearing before the Board (referred to in this section as the appellant) applies to the Board, the High Court or the Court of Appeal, as the case may be, that the proceedings be heard by way of a hearing open to the public, the Board or the Court may direct that the proceedings be so heard, notwithstanding any objection from the other party to the proceedings.

(3) Where in the opinion of the Board, the High Court or the Court of Appeal any proceedings heard in camera ought to be reported, the Board, the High Court or the Court of Appeal may publish or authorise the publication of the facts of the case, the arguments and the decision relating to these proceedings without disclosing the identity of the appellant concerned.

**Decision to be final and conclusive**

**57.** Except as expressly provided in this Act —

(a) where no valid notice of appeal has been lodged within the time limits under section 51 against the decision of the Comptroller on any matter referred to in section 49;

(b) where such notice has been lodged but it has been withdrawn before the decision has been determined on appeal;

(c) where an agreement (whether in writing or otherwise) has been reached on the decision made between the Comptroller and the person who lodged the notice and the Comptroller has in consequence varied the decision in writing; or

(d) where the decision has been determined on appeal, the decision as made, varied in consequence of the agreement or determined on appeal shall be final and conclusive for the purposes of this Act.