

Apex body at the highest level in CBIC to clarify all matters of interpretation

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15th Finance Commission made more than a hundred recommendations to the Government(s). Among the recommendations on GST were:

1. The IT platform of GST needs to be rectified forthwith and strict compliance ensured with the timelines of filing GST returns, which should lead to seamless invoice-matching and identification of frauds. This should also facilitate regular flow of consistent data on turnovers, output GST, input tax credits and net collections, with possible degree of disaggregation to facilitate scrutiny, analysis and feedback to policy.
2. The unit level information from GSTN should help in expanding the breadth of direct taxes. Tax authorities need to overcome technical impediments and operationalise the tax information system efficiently. (Action by Union and the States)
3. States will need to step up field efforts for expanding the GST base and for ensuring compliance, commensurate with their field strength and infrastructure for VAT and GST collection. (Action by States).
4. With the help of information from GST returns, the increasing number of formal transactions and the trail of bank transactions, the direct tax administration should track individual proprietorships and partnerships more effectively (Income Tax - Action by Department of Revenue, Government of India).
5.
The constitution of an apex body at the highest level in the CBDT and CBIC to clarify all matters of interpretation will help ensure consistency and uniformity across jurisdictions.
6. The inverted duty structure between intermediate inputs and final outputs present in the GST for many items should be resolved by streamlining its multiple rate structure. This can be corrected even without the weighted effective tax rate going up, with a salutary impact on net revenue collections of the general government.

The Commission also observed, "

While the full impact of GST is yet to unfold, the first three years suggest an overall disturbing trend and a differentiated impact among States."

GST is nearly four years old and we don't really need the Finance Commission to recommend these visionary ideas. We all know them. Only problem is somebody somewhere is just not bothered or the somebody who is to do all these, is simply helpless. Now that an esteemed body like the Finance Commission has recommended these, maybe the 'powers that be' should start the process of reconstruction. The babus are brilliant - they can do it. Let's hope the wise counsel from the Finance Commission will inspire them to do little things to make GST a little more bearable.

GSTAT - when?

To add one more line of confusion to the much-battered simple tax called GST, the GST Appellate Tribunal was all set to be launched before the unfortunate taxpayers and their legal counsel. But wait, there is a break.

To recall the salient features of the to be **soon**

launched Tribunal, each bench of the GSTAT will have two technical members and one judicial member. The Technical Members are from

the GST Departments and the Judicial Members are to be selected from High Court Judges, District Judges and Indian Legal Service officers of Additional Secretary level. Why should these distinguished dignitaries join the Tribunal to sit along with Additional Commissioners of the GST Department, is a question we will have to answer in the days to come. And the fun is the bench will have a majority of these additional commissioners who can overrule the decision of the minority Judicial Member who is a judge of a High Court or District Court. Another funny feature is that lawyers are not eligible to be appointed as Judicial Members of this mighty Tribunal. A lawyer can be straight away catapulted from the Bar to Bench. He can be appointed as a Supreme Court Judge, a High Court Judge or a Judicial Member in many of the Tribunals, but GST Appellate Tribunal, No. There is a bar on bar. Â

Anyway, fortunately, when bureaucrats, who write the laws for the legislators and then interpret them as to what the legislative intent was, make a mess of legal drafting, the higher courts in the country have not hesitated to iron out the creases. Â

About a year and a half ago, the Madras High Court held the constitution of the GST Appellate Tribunal unconstitutional. - Â [2019-TIOL-2188-HC-MAD-GST](#)

The questions before the High Court were: Â

1. Whether the exclusion of advocates from being considered for appointment as a Judicial Member in GST Appellate Tribunal, is violative of Article 14 of the Constitution of India. Â

2. Whether Section 110 (b)(iii) which makes a member of the Indian Legal Service, eligible to be appointed as a Judicial Member of the appellate tribunal, contrary to the law laid down by the Hon'ble Supreme Court in Union of India Vs. R.Gandhi reported in - [2010-TIOL-39-SC-MISC](#). Â

3. Whether the composition of the GST Appellate Tribunal, which consists of one Judicial Member, one Technical Member (Centre) and one Technical Member (State), by which the administrative members outnumber the judicial member is violative of Articles 14 and 50 of the Constitution of India.

Lawyers as Judicial Members: Even though the constitutional validity of Section 110(1)(b) cannot be struck down on the ground of non-inclusion of advocates as being eligible for being considered for appointment as Judicial Member to the Appellate Tribunal under the CGST, yet the High Court was of the opinion that the Union of India must evaluate as to why it is making a departure from the existing practice. Advocates are eligible to be appointed as Judicial Members in the ITAT which is the oldest Tribunal in the country. Lawyers are eligible for appointment as Judicial Member in the Customs, Excise and Service Tax Appellate Tribunal. When the constitution provides that lawyers are eligible to be appointed as Judges of the High Court, then there is no reason to exclude them from being considered for appointment as Judicial Members. Keeping in mind the existing practice in appointing lawyers to various Tribunals as Judicial Members and the various issues that are likely to arise while adjudicating disputes under the CGST Act, the High Court recommended that the Parliament should reconsider the issue regarding the eligibility of lawyers to be appointed as Judicial Members in the Appellate Tribunal. Â

Indian Legal Service Officers as Judicial Members: The challenge to appointment of a person, who is or has been a member of Indian Legal Service and has held a post not less than Additional Secretary for a period of three years, is no longer **res**

Â integra. The issue stands settled. Paragraph No.120 in **Union**

of India Vs. R.Gandhi categorically states that a person who has held a position under the Indian Legal service cannot be considered for appointment as judicial members. And the High Court had no difficulty in striking down this provision. Â

Majority of Technical Members: The High Court observed that tribunals which primarily decide disputes between State and citizens cannot be run by a majority consisting of non-judicial members.

In the result, the High Court - Â

(i) Struck down Section 110(1)(b)(iii) of the CGST Act which states that a Member of the Indian Legal Services, who has held a post not less than Additional Secretary for three years, can be appointed as a Judicial Member in GSTAT. Â

(ii) Struck down Section 109(3) and 109(9) of the CGST [Act, 2017](#) which prescribes that the tribunal shall consist of one Judicial Member, one Technical Member (Centre) and one Technical Member (State). Â

(iii) Rejected the argument that Sections 109 & 110 of the CGST Act, 2017 and TNGST [Act, 2017](#) are ultra vires, insofar as exclusion of lawyers from the scope and view for consideration as members of the tribunal. However, the High Court recommended that the Parliament must consider to amend section for including lawyers to be eligible to be appointed as Judicial Members to the Appellate Tribunal in view of the issues which are likely to arise for adjudication under the CGST Act and in order to maintain uniformity in various statutes. Â

Thus, the GSTAT cannot function unless these defects are rectified, for which the government seems to be in no hurry. But then what happens to the appeals which are to be filed before the Tribunal?

GSTAT in UP

Yesterday, the Allahabad High Court ordered: [2021-TIOL-322-HC-ALL-GST](#)

- (i) The Central Government shall, within next four weeks, specify by notification in terms of sub-Section (6) of Section 109 of the CGST Act the "**State Bench**" at Prayagraj (Allahabad), of the Goods and Services Tax Appellate Tribunal and four Area Benches at Ghaziabad, Lucknow, Varanasi and Agra, in the State of Uttar Pradesh for exercising the powers of the Appellate Tribunal.
- (ii) The respondent shall ensure that the State Bench and the Area Benches of the Appellate Tribunal (Goods and Service Tax Appellate Tribunal) in the State of Uttar Pradesh are made functional **as far as possible from 01.04.2021**.
- (iii) Since the challenge to the impugned orders relates to questions of fact and the Appellate Tribunal is the last factfinding authority, therefore, we leave it open for all the petitioners to challenge the impugned orders before the Appellate Tribunal under Section 112 of the CGST Act/U.P. GST Act as and when the State Bench and Area Benches of the Appellate Tribunal are constituted in the State of Uttar Pradesh.

So, the Appellate Tribunal should function in Uttar Pradesh **as far as possible from 01.04.2021**.

Will the Government tell the Court that it is not possible, since we do not know who can be the Members of this Tribunal. We have to first get the law straightened, then look for Members and then only think of a functional bench. The only option for the Government is to take the familiar route to Supreme Court and try to get the High Court order stayed. Litigation continues â€¦!

Until next week