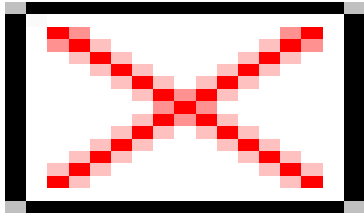


## Constitution of GST Appellate Tribunals - Need of the hour

JANUARY 13, 2022

**By Dipti Nayak, Director & Priya Rani, Assistant Manager, Grant Thornton Bharat LLP**



**IT'S**

only been about four years of implementation of Goods and Services Tax (GST) and the level of litigations and disputes have already increased multi-fold. There are various factors such as interpretation issues as GST being a new law, complex legal provisions, technical glitches, and denial of benefits etc. giving rise to these litigations. It is imperative that such litigations are resolved / controlled in the initial years itself else the foundation on which GST is laid will collapse. Hence, at this juncture, the need to have a robust appellate mechanism and fast track dispute resolution is imperative. In such a scenario, the non-constitution of GST appellate tribunals ("**GSTAT**" or "**Tribunal**" ) can be termed as a major failure for the entire judiciary system.

The GST provisions empower the central government to constitute Tribunal to hear and dispose the appeals against the orders pronounced by the first level appellate authority or the revisional authority. The GSTAT is the second appeal forum for any dissatisfactory order passed by the First Appellate Authorities. The National Appellate Tribunal is also the first common forum to resolve disputes between the Centre and the states. However, unfortunately, despite having a legislative mandate under the GST laws, GST tribunals are not yet constituted.

The Madras High Court <sup>1</sup>

had held that composition of GST Appellate Tribunal is unconstitutional and had recommended the government to reconsider the issue regarding the eligibility of lawyers to be appointed as Judicial Members in the Appellate Tribunal.

In view of the above decision and in order to remove difficulty arising in giving effect to the provisions of the Act, the Government has issued the Central Goods and Services Tax (Ninth Removal of Difficulties) Order, 2019 dated 3 Dec 2019 through which it has been provided that the appeal to Tribunal can be made within three months from the date of communication of order or date on which the President or the State President, as the case may be, of the Appellate Tribunal enters office, whichever is later. However, it appears, it does not solve the actual problem and is not a long-term resolution.

At present, the order of Appellate Authority cannot attain its finality and no action could be initiated against the order of the Appellate Authority. All the orders passed by the GST appellate authorities are keenly waiting for setting up of tribunal for speedy justice. Tactlessly, even before setting up of tribunals, there is a gigantic number of pending cases already piled up. The Allahabad HC <sup>2</sup>

had also directed the Centre & State Govt. to provide a cut-off date for setting up Appellate Tribunal and held that a litigant cannot be left without a remedy for reasons that the Government is unable to provide forums. The High Courts have also urged assesses <sup>3</sup> to appeal after Tribunal Constitution. However, since the Tribunal is not constituted /functional, the petitioner is remediless at this moment.

Besides, a PIL in the Apex Court has also sought directions to the Centre for setting up of the GST Appellate Tribunal which had not been set up even after four years of the GST Act being in existence. In the interest of justice, the constitution of National and other Benches of the appellate tribunal under the CGST Act, 2017 is an absolute necessity and the Centre can't delay it for an indefinite period.

### **Implications of non-operationalization of Tribunals**

### **Delay in justice**

: Without constitution of tribunals, the number of cases is getting piled up which will take years for its final disposal. A sufficient, reasonable, and due hearing of every case with consideration of its circumstances is the essential prerequisite of natural justice.

### **Challenges the competence of the system**

: Non-constitution of GSTAT challenges the competence of the system to deliver justice in an efficient and effective manner.

**Disappointment for litigants:** Delayed justice and pending litigation has created disappointment amid the petitioners/appellants.

### **Defeat the purpose of GST Law**

: The pending appeals arising against the orders/ directions passed by the first appellate authority are pending due to absence of any appellate tribunal, which is defying the objectives of introduction of the GST.

### **Denouement**

GSTAT is expected to serve as a dispute resolution forum and such delays causes one of the biggest hurdles leading to numerous undecided disputes across the country with no chance to appeal. The absence of a proper appeal mechanism is a big challenge, both for the government and the taxpayers. Hence, this is the high time to take appropriate and expeditious steps to constitute the Appellate Tribunal. The object behind approaching the judiciary is to get due justice and it's a well-established fact that "**Justice Delayed is Justice Denied**". Even GST Council should consider taking up this matter on priority and provide a suitable way forward.

[The views expressed are strictly personal.]

**1** *In case of Revenue Bar Association vs Union of India - [2019-TIOL-2188-HC-MAD-GST](#)*

**2** *In case of Torque Pharmaceuticals Private Limited vs Union of India - [2019-TIOL-521-HC-ALL-GST](#) - [2021-TIOL-322-HC-ALL-GST](#)*

**3** *Polo International vs State of Uttar Pradesh- [2020-TIOL-1088-HC-ALL-GST](#)*

*(DISCLAIMER : The views expressed are strictly of the author and Taxindiaonline.com doesn't necessarily subscribe to the same. Taxindiaonline.com Pvt. Ltd. is not responsible or liable for any loss or damage caused to anyone due to any interpretation, error, omission in the articles being hosted on the site)*