

A NOTE ON GSTAT: STATE LEVEL VS NATIONAL LEVEL

By
Coalition for the GSTAT in India

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ABOUT THE COALITION FOR GSTAT

The GSTAT Coalition India has brought together experts from various domains – lawyers, chartered accountants, economists, policymakers and administrators—to advocate for the speedy constitution of, and development of an inclusive and shared imagination of modern digital, GSTAT of global standards.

The members of this coalition are:

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The Coalition has been convened by DAKSH, a civil society organisation working on law and justice system reforms, and accountability and transparency of institutions. For more details- visit - www.dakshindia.org

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<https://www.dakshindia.org/coalition-for-the-goods-and-services-tax-appellate-tribunal-in-india/>

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BACKGROUND

The Goods and Service Tax (GST) has been a unified indirect tax levied uniformly across India that has subsumed many taxes and levies that were previously levied at the union, state and municipal government levels. In administering GST, the Union and state governments have adopted an innovative dual administration based on the turnover of taxpayers. The question of jurisdiction has arisen once again in designing the GST Appellate Tribunal. Some states have expressed the need to have state-level GSTATs. The Coalition for GSTAT has in November 2022 put out a Joint Note on GSTAT on the institutional design, operating model and legal framework for a truly modern GSTAT. One of the recommendations was that the GSTAT should be a single national institution with benches across the country. This note will explore the implications of state-level and national-level GSTAT based on the framework of the guiding principles for institutional design in the Joint Note.

A. INDEPENDENCE		
Factors	State Level Tribunal	National Level Tribunal
Search-cum-selection committee headed by the Chief Justice of India (CJI) or his nominee.	Will need to be set up for each state or explore other ways to ensure the participation of states.	One committee across the country.
Permanent cadre with no option to return to parent department.	Will be a departure from previous practice at State VAT tribunals in most states.	Already the practice at all national tribunals – will need state cadre to come on board.
Attracting the best talent from amongst practitioners	May vary with each state –other qualifying conditions also matter.	May help tide over state level variations - other qualifying conditions also matter.
Leadership	Each state will need a President. The president will need to be a retired High Court or a District Judge eligible to be a High Court judge. This raises both personnel-related challenges and budgetary concerns.	Only one President for the institution nationally who will need to be a retired Supreme Court or High Court judge. Vice Presidents could be appointed at state level.
<p>A national level tribunal will ensure independence by instituting a permanent GSTAT cadre drawn from a rigorous selection process, adhering to the principles laid down in the Madras Bar Association case and having the service conditions like other union-level tribunal can also attract best talent.</p> <p>The states can be represented in the search cum selection committee by including the Chief Secretary of State on a rotation basis.</p>		

B. CITIZEN CENTRIC

Factors	State Level Tribunal	National Level Tribunal
Certainty of Proceedings with uniform Case Flow Management (CFM) rules	State level variations will lead to arbitrage opportunities and impose direct costs on tax payers, and indirect cost to the society as a whole.	Uniform national legal framework that allow for state level needs can ensure certainty of proceedings.
Digitally Native that includes all stakeholders in the ecosystem through an API enabled single national platform	Modules developed by one technology service provider can be adopted by all.	One single platform for the national tribunal.
Location of area benches	State governments may have limited say in the setting up of area benches based on current jurisprudence – a mechanism could be evolved where their inputs are factored in.	A mechanism for Union and state governments to share inputs on the setting up of area benches could be evolved – under a framework to guide this process.
<p>The national level tribunal will be citizen-centric with uniform rules and digitally integrated at the national level. A mechanism needs to be evolved for Union and state governments to share inputs on the setting up of GSTAT benches or ‘area benches’ under a framework.</p>		

C. FEDERAL CHARACTER

Factors	State Level Tribunal	National Level Tribunal
Parity between personnel’s from Union and State Level cadre	This requirement is closely linked to whether the state level tribunals will also have jurisdiction on cases handled by Union cadre	Feasible
Transferability across states	Not Feasible	Feasible
<p>The national level tribunal can maintain parity between personnel drawn from Union and state levels. It will also be able to maintain parity in smaller and newer states by empowering the President to transfer cadre from one state to another.</p>		

D. HARMONISING JURISPRUDENCE

Factors	State Level Tribunal	National Level Tribunal
Jurisprudential certainty	Since these are by definition different institutions, no binding precedence is created.	Binding precedence can be created. Also provides for scope for evolution of jurisprudence through differing rulings as independence of bench will anyway be maintained.
A national-level tribunal can harmonise different opinions of the benches and aid in the development of GST jurisprudence		

E. FUNCTIONAL SPECIALISATION AND ADMINISTRATIVE STRUCTURE

Factors	State Level Tribunal	National Level Tribunal
Staff with core competency across domains to create a state-of-the-art GSTAT	Will need staff across the country to perform the same function leading to duplicity of effort and cost.	Will optimise personnel and cost
Adequate resources to enhance administrative functions	Not Feasible	Feasible
<p>A national-level tribunal can have a separate and dedicated agency/organisation to manage administrative functions that would report to the leadership team.</p> <p>Given the concerns on budgetary support to tribunals and administrative involvement of parent departments in the past, it is important that the GSTAT is designed for carrying out administrative functions independently. This is even more important given that the GSTAT will be handling dispute resolution at both Union and state levels.</p> <p>Concerns have also been raised on how the functioning of the GST Council has become dependent on the Central Board of Indirect Taxes and Customs (CBIC) due to the lack of its own secretariat. A strong independent administrative team for the GSTAT can ensure there is no need for such course corrections in the near future.</p>		

SUMMARY

The constitution of the Goods and Service Tax Appellate Tribunal (GSTAT) as a Single national tribunal with at least one bench in each of the state provides an opportunity to build upon the underlying mechanisms of cooperative federalism that characterise the GST regime. On the contrary, constituting State level Appellate Tribunal with the same premise as the erstwhile Commercial Tax Tribunal/VAT Tribunals will be met with several legal and technical impediments to a harmonized functioning of the taxation system and development of uniform jurisprudence.

Most importantly, constituting a state-level appellate tribunal for each state will be hampered by limited state capacity in terms of resources, and expertise. The concerns of the state governments can be addressed at the level of the GST Council. A strong independent administrative structure needs to be created to allay any concerns on the interference of the executive. Considering the aforementioned aspects, a national-level GSTAT will be best placed to realise the vision of the GST regime while upholding the principle of cooperative federalism.



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