

Roundtable summary

The Coalition for the GSTAT in India convened an online roundtable conference on *January 4, 2023*, to deliberate upon the modalities for the constitution of the Goods and Service Tax Appellate Tribunal (GSTAT). The participants included important stakeholders ranging from representatives from the trade and commerce associations at the national and regional levels to practitioners and government officials. The keynote address was delivered by Mr. DP Nagendra Kumar (*Member GST, CBIC*), followed by the roundtable discussion.

The participants reiterated the urgency in constituting the GSTAT as the first independent body in the litigation hierarchy for GST-related disputes and deliberated on various aspects like implications of a single national tribunal vs state level tribunals, areas where the state governments can have more say and ways to ensure simplicity and certainty of proceedings.

In this context, the following ideas emerged from the deliberations held at the conference:

- The urgency of constituting the GSTAT- Five years have already elapsed since the incorporation of the GST regime and the GSTAT has still not been established. The urgency of constituting GSTAT is even more as various High Courts have started to refrain from adjudicating on appeals from orders passed by the appellate authority or the revisional authority and there is a lack of uniformity and certainty in the orders passed by departmental officers across states. Even the extension of the time limit for filing the second appeal has not provided much relief to the taxpayers.
- National Level v. State Level Tribunal- The GST regime envisages a structure that provides for uniformity in the administration of tax including dispute resolution. The GSTN has achieved a seamless integration of front-end and back-end functions of central and state-level tax administrations. This has made it possible to constitute a national-level Tribunal headed by the President with state-level benches across India, being operated by Vice President(s). The national level tribunal can bring uniformity in the jurisprudence and efficiency in justice administration. For this, a special amendment needs to be introduced to amend Section 109 of the CGST Act, 2017 or possibly through a money bill or an ordinance route.

However, participants also pointed out that the state level tax administrators feel the need for GSTAT to be at state level. In this context, alternate structures such as a 2-tier tribunal system to accommodate the interest of states, separating jurisdiction for central and state tribunals were also brought up. The pros and cons of each of these alternatives in the context of achieving tax certainty and ease of doing business needs to be gone into in detail.

- Members - There was unanimous agreement that GSTAT should have an equal number of technical and judicial members to maintain an independent and impartial character.

- Appointment of Members - That the appointment of members and the composition of the search cum selection committee of the members should conform to the principles laid down by the Supreme Court and the High Court in the *Revenue Bar Association Case*, *Madras Bar Association Case* and *Rojer Mathews Case* i.e. the independence of the panel should be maintained by including more judicial representation with Chief Justice of India (CJI) or his/her nominee to be the chairperson with a casting vote was also agreed. Some participants shared the state tax administrators feel the need to have state level search-cum-selection committees.

To bring in more talent to be members of GSTAT, advocates and other professionals with appropriate eligibility criteria may also be considered to be members of the tribunal.

- Independence and Impartiality - The practices and pitfalls of the legacy tax tribunals suggest that GSTAT should have a permanent cadre with no option of returning to the parent cadre. The transferability of the members is also desirable to achieve uniformity and efficiency. The president should be the authority to decide on the transferability of members based on the workload and administrative contingencies.

Further, provisions may be made that ensure that technical members drawn from states cadre do not hear matters arising from their home state. Alternatively, subject-matter-based segregation of cases could be considered for allocation to different benches to ensure the equitable representation of members from state and central level cadres as per the domain expertise and in conformity with federal principles.

- Digitally Native- The GSTAT should be completely paperless and digital to ensure scrutiny and case management. There should be complete integration with GSTN through an API-enabled single national platform. This digital ecosystem should include all stakeholders within the tax department, the Department of Legal Affairs, and the central agencies section till the level of the Supreme Court registry to bring transparency and accountability at every level on delay and oversight. Since the e-Committee mandates that revenue appeals in all the High Courts are to be filed electronically, it must be ensured that the tribunal should be completely automated and the registry functions should be online.

This calls for the deployment of a Chief Technical Officer (CTO), a data analytics team and dedicated staff responsible for finance, human resources, and general administration.

- Time-bound Disposal- Since the GSTAT will already be facing a backlog from the last five years, the number of hearings for each case must be capped and be made more effective to

ensure that the problem of pendency does not arise.

- Location- The geographical distribution of benches should be on an equitable basis, to be accessible and aid in the development of the legal profession at the local level. This can be done by identifying more Tier 2 and Tier 3 cities where the benches can be established. Further, the infrastructure of CESTAT and VAT Tribunals should be absorbed and utilised for GSTAT.