

Unborn GST Tribunal and The Travails of The Taxpayer

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The success of efficient of tax reforms hinges largely upon a robust dispute settlement system, which cater efficiency in disposal of disputes, while keeping litigation cost low. Ambiguity and delay in any dispute resolution mechanism is detrimental for any system including taxation. We have witnessed a steep rise in Goods & Services Tax (GST) litigation primarily due to ambiguity in statutory provisions and/or frequent changes in law. Even after five years of introduction of GST, the Goods and Service Tax Appellate Tribunal (GSTAT) is yet to see the light of the day.

As per the current construct, an assessee dissatisfied with the decision of the first appellate authority or by the Revisional Authority, is expected to prefer an appeal to the Appellate Tribunal. Further, National GSTAT can take up the matters where one of the issues involved is with regard to 'place of supply'. As a consequence of non-constitution of an Appellate Tribunal, orders passed by departmental authorities are awaiting constitution of the Appellate Tribunal in order to provide clarity or decisions on various issues.

In the absence of GSTAT, taxpayers are compelled to approach High Courts, causing further stress on an already overburdened justice system, leading to delay in administration of justice to genuine taxpayers. From the taxpayer's point of view, even for completely justified tax positions, they have no option but to wait long for remedy. Further non-constitution of Tribunal is leading to increase in interest burden, delay in genuine refunds, pre-deposit of taxes leading to cash flow challenges and repetitive show cause notice to cascade disputes. Immediate formation of GSTAT and expeditious resolution of dispute is the crying need of the hour!

The Government, on the recommendation of the GST Council, extended the limitation period to file an appeal against the order/direction passed by the Appellate/Revisional Authority from three months to the time till the President or the State President of the Appellate tribunal enters the office. However, such clarifications to merely extend timeline do not resolve the underlying legal dispute and cannot be seen as a resolution for the same. Further, the Order of the Government extending the limitation period to file an appeal has also been challenged on the grounds that the said extension cannot be for an indefinite period.

It is imperative to note that the existing Appellate Tribunal (CESTAT) under the Customs and erstwhile Central Excise/Service Tax law are already flooded with numerous unattended tax disputes. As and when the GST Tribunal is established, in all probability it will commence with a long pendency. All the orders passed by the field GST appellate authorities are in a state of hibernation. In all probability, the unborn GSTAT will start with an overburden from day one and the taxpayers (with hardly any decision going against tax authority) are compelled to wait for justice.

The delay in constitution of the Appellate Tribunal may be attributed to a number of factors viz. qualification of members of the Tribunal benches, the proportion of judicial and technical members, empowerments of State Governments for changing the appointment criteria of technical members etc.

The Hon'ble Supreme Court has also sought directions from the government for set-up of the GSTAT as mandated under the Central Goods and Services Act, 2017, to avoid hardships caused to litigants and to

curb huge backlog of cases. The Union Government formed a Group of Ministers (GoM) to propose amendments to legal framework for set-up of GSTAT. The GoM was constituted with the objective of addressing various concerns raised by the States. It is understood that the GoM have agreed on the contours and framework for the GSTAT and its recommendations are to be taken up by the GST Council soon.

Fortunately, the process of set-up of the Tribunals have eventually picked-up steam. Now that there is already a delay in the formation and functioning of the GSTAT, the stakeholders are anticipating that the Tribunals would be efficient in the disposal of the disputes in a timely manner.

It is pertinent to note that time limit for issuance of show cause notices for the first few years of introduction of GST is fast approaching. Coupled with the elevated audit and assessment processes, we shall soon witness a flurry of disputes awaiting to be addressed at the adjudication and appellate level. At this juncture, absence of a proper appeal mechanism is a big challenge both for the government and the taxpayers which should be prioritised, and the issue should be resolved at the earliest.

The creation of GSTAT could be life saver that the aggrieved is seeking - ***'unneeded delay in the verdict is an unjust attempt to hinder transparent justice'***.