

Madras Tax Bar challenges constitutional validity of substituted GST Appellate Tribunal provisions before SC

Sep 18, 2023

SC issues Notice in a writ by Madras Tax Bar challenging constitutionality of substituted CGST provisions which relate to appointment and condition of service of members to GST Appellate Tribunal; Petitioner contends that Sections 149 and 150 of Finance Act, 2023 that seek to substitute Sections 109 and 110 of CGST Act [specifically with respect to Sections 109(9), 110(1)(b), 110(1)(c), 110(1)(d), 110(4)(b)(ii), 110(4)(b)(iv), 110(6), 110(8), 110(9) and 110(10) of the CGST Act] are violative of Articles 14, 19 and 21 r/w Article 50 as they are in contravention of the principles of independence of the judiciary, rule of law and separation of powers (which are part of the Basic Structure of Constitution); Petitioner avers that on [February 01, 2023](#), the Finance Bill, 2023 was introduced and there were no provisions relating to the GST Appellate Tribunal in the Finance Bill however, on March 22, 2023, through last minute changes, Sections 137A to 137G were added to the [Finance Bill](#) amending the provisions of CGST Act; It was therefore, claimed by the Petitioner that through these amendments, various changes were proposed to be made to the Appellate Tribunal's constitution, qualifications for members, process of appointment and the conditions of service of members to be appointed; Petitioner submits that though the said provisions of the Finance Act, 2023 have not yet been notified however, the substituted Sections 109 and 110 will have various provisions that are directly and ex facie in violation of various judgments of this Court wherein similar provisions have been held to be unconstitutional; Petitioner inter-alia submits that Section 109(9) is unconstitutional and ought to be read down as the provision indirectly allows a bench consisting of 8 two technical members and one judicial member, further, Section 110(1)(b) will once again exclude advocates from appointment as judicial members, and is therefore impermissible and ought to be struck down; It is argued that Sections 110(1)(c) and 110(1)(d) will provide for appointment of persons who were in any All India Service / Group A service having "three years of experience in the administration of an existing law ..." and other vague and non-adjudicatory experience and thus, the provisions are unconstitutional and ought to be struck down; SC states that, "Since Constitutional validity of various provisions of the Central Goods and Services Tax, 2017, as amended by the Finance Act, 2023, are in question, liberty to serve the Attorney General for India" and tags with another writ petition.

The matter is being heard by the Chief Justice D.Y. Chandrachud along with Justice J.B. Pardiwala and Justice Manoj Misra.

Advocates T. V. S. Raghavendra Sreyas (AOR), Naveen Hegde and Rahul Unnikrishnan are appearing on behalf of the Petitioner.

The information contained in the above alert is source-based.

GSTsutra Note:

Madras HC in the matter of **Revenue Bar Association** [\[TS-735-HC-2019\(MAD\)-NT\]](#) had struck down Section 109(3) and 109(9) of CGST Act, 2017 prescribing that GST Appellate Tribunal (GSTAT) shall consist of one Judicial Member, one Technical Member (Centre) and one Technical Member (State) i.e., two administrative members vis-a-vis one judicial member and also, struck down Section 110(1)(b)(iii) stipulating that Member of Indian Legal Services, who has held a post not less than Additional Secretary for 3 years, can be appointed as a Judicial Member in GSTAT.