



# All India Federation of Tax Practitioner

(An Association of Advocates, Chartered Accountants & Tax Practitioners of India)

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Before,  
The Hon'ble Finance Minister,  
Government of India  
&  
Chairperson, GST Council,  
New Delhi,

Reg: Establishment of 'Goods and Services Tax Appellate Tribunal' (GSTAT) – National, Regional, State and Area Bench (hereinafter referred to as "the Benches") under Section 109 of the Central Goods and Services Act 2017 in line with the policy/decision of the GST Council

Respected Madam,

The CGST Act 2017 being a newly introduced and evolving piece of Legislation is leading to divergent legal interpretations, inspite of the best efforts of the Central Government including GST Council or CBIC or GSTN to minimize the litigation. It is obvious that the tax-payers large or small may have their unique and genuine legal disputes for which the Government should provide a robust judicial platform, which should also be convenient and within the best possible reach of the litigant. The '*SULABH NAYAYA*' is the right principle for dispensation of justice.

A large number of small, medium and large tax-payers are registered under GST and engaged in the Supply of Goods and Services from every part of the country, these assesses must have the means to get their genuine legal issues remedied from the bench of the GSTAT Tribunal as envisaged in the GST law.



It is important to note that the 'Proper Officers' or 'Jurisdictional Officers' of CGST and SGST are already started scrutinizing the monthly return and now conducting 'Tax Audit' for the Financial Year 2017-18, 2018-19, 2019-20 and 2020-21 as the Annual Return had already been filed. Goods under transport are also being detained/seized by Mobile Squads and large amount of securities/penalties are being demanded; further many issues are cropping up from scrutiny and audits which needs remedial judicial actions after detailed analysis of the facts as provided under the law. In spite of the provision of a special court (Tribunal) i.e. GSTAT in the GST law the genuine assesseees/taxpayers were presently forced to approach Hon'ble High Court's which is undesirably creating pressure on the constitutional courts.

In light of the above, we would like to submit certain points of consideration for your good-self which are as follows:

**A. JUSTICE AT DOOR-STEPS**

Four years have already been passed and in the absence of Benches of GSTAT, the assesseees have to face lot of hardships and difficulties which are creating hindrance in the smooth functioning of their business.

The biggest hindrance that assessee is facing that the Law is at nascent stage and due to it many of the provisions are still unclear to the Revenue as well as the Assessee. Therefore, due to lack of understanding of the legal provisions, the assessee has to suffer a lot as for each petty issue the assessee has to file Writ Petition in Hon'ble High Courts. It is submitted that filing of Writ Petition is not viable alternative as well as being a expensive task the assessee has to bear lot of expenses during the whole proceedings for getting justice, which is nothing but a harassment to the assessee. Due to absence of GST Tribunals the scheme of "*Justice at Door-Steps*" is being violated.

**B. PETTY ISSUES HAVE TO BE ADJUDICATED BY HON'BLE HIGH COURTS**

It is pertinent herein to state that the Hon'ble High Court being the Constitutional Court, the Highest Court in a particular State or States, is being un-necessarily flooded with the Writ Petitions which bears petty issues like Technical Glitches on the GST portal, wherein there is no legal interpretation or complexities involved. Still Hon'ble High Court have to look into these matters which waste lot of precious Judicial time of the Hon'ble High Courts.

It is submitted that for the factual issues pertaining to E-way bill and confiscation of goods, assessee have to approach Hon'ble High Courts, wherein there is no such legal intricacies or technicalities or complexities, which should be more appropriately be examined by the last fact-finding court viz the GST Tribunal.

As per the judicial system of the country, the Hon'ble High Court may only look into the matters pertaining to pure law in accordance to the Constitution of India and not these primarily factual issues as stated above.

**C. INTERPRETATION**

It is submitted that by not establishing the Benches of GSTAT, the confusion among the Assessee and the Revenue gravely exists as proper interpretation of provisions based on the facts of unique circumstances are not available with any of them, which is resulting in lot of misinterpretation by the Revenue and due to which Assessee has to suffer.

The function of specialised Tribunal like GST Tribunal is not only to adjudicate the cases most efficiently but also to provide detailed and well thought of interpretation to the GST Law, in absence of the Benches of GST Tribunal the country is not getting the due benefit as envisaged in the GST Law passed by the Parliament and assured by the Government to the large number of taxpayers of the country.

**D. ASSESSEE ARE BEING MISLED INTO ADVANCE RULINGS**

It is submitted that due to non-formation of the Benches of GSTAT, many Assessee are being forced to go to Advance Rulings and many of the Orders pronounced by Advance Rulings are not only against the Assessee but also without justified application of mind and law, and after the Appellate Authority there is no scope of hearing the Appeal. In addition to this, it is submitted that by non-formation of GSTAT, many Assessee are falsely taking into consideration as the final order on the matter and are complying with it, which is totally wrongful as the Order pronounced by the Advance Rulings is not the Judicial Order. Therefore, it would be unjust for the Assessee along with other Taxpayers as well as for the Revenue to follow the absolutely wrong non-Judicial Order pronounced by the Advance Rulings and raise demand on the Assessee by making reference to its interpretation.

**E. BLOCKING OF AMOUNT FOR BOTH THE ASSESSEE AND REVENUE IS NOT GOOD FOR ECONOMIC RECOVERY**

It is submitted that due to non-formation of GST Tribunal, many of the 2<sup>nd</sup> Appeals have been piled up for adjudication by the Tribunals which would result into the huge pendency of Appeals before the Tribunals when it would come into the existence. Delay in adjudication of Appeals will result in unreasonable blockage of funds which would create difficulties for both the Assessee as well as the Revenue.

It is relevant herein to state that our Country have just seen the second wave of Covid-19 which was disastrous for our Economy. Therefore, for the fast revival the concrete steps should be taken in creation of the Benches of GSTAT so that there could be no blockage of precious money due to the pendency of cases.

**F. ASSESSEE FORCED TO PAY TAX WHICH SETS WRONG PRECEDENT**

It is submitted that due to non-formation of Tribunals, the assessee sometimes ends-up pay Tax under protest which sets wrong precedent for the coming financial years as well as for other Assesses. This is nothing but harassment for the genuine taxpayers of the Nation. If this continues then the law would lose its credibility and the concept of '*Good and Simple Tax*' would remain on papers only.

In furtherance to the above points, it is requested that your good-self shall take the points into consideration raised by various Writ Petitions filed in different Hon'ble High Courts across the country wherein challenges to various provision of GST appellate Tribunal has been made, so that there shall be no hindrance in creation of GST Appellate Tribunals.

Two years had already passed since the Government of India had issued a Gazette Notification No. 2744 on 21<sup>st</sup> August, 2019, whereby the way of creation of some Benches of Goods & Service Tax Tribunal was opened, but still none of the benches have actually been established. The tax-payers and people of our country want Benches of GSTAT Tribunal so that they can also approach the Tribunal for their GST litigation which is also in line with the policy/decision of the GST Council.

The early creation and formation of GSTAT whole over the country will facilitate quick and convenient dispensation of justice. The **'Rule of Law in collection of GST'** must prevail in an established democracy like India for valid, fair and just collection of large amount of 'Goods and Service Tax' to the tune of more than Rs 1,00,000 crore every month.

We request your honour to kindly consider our very reasonable request so that actual formation of all the benches of GST Tribunal's must happen in our country and their working should be started in very near future.

With highest regards,

Yours faithfully,

For: All India Federation of Tax Practitioners

(Mukul Gupta)

Chairman

Indirect Tax GST Representation Committee

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