

Tax Update: Delhi HC directs government to consider appropriate amendments in the GST law before formulating GSTAT

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Background

- A writ petition¹ was filed before the Delhi High Court (HC) asking it to direct the government to not constitute the Goods and Services Tax Appellate Tribunal (GSTAT) and/or appoint members thereof till provisions² of the GST law are brought in line with the settled principles regarding appointment of members and constitution of benches, in order to ensure rule of law and in line with separation of powers.

Petitioner's contentions

- **Infirmities in provisions:** The Petitioner referred to a Supreme Court (SC) decision³ and contended that there are certain key infirmities in the GST law including:
 - Excess number of technical members on the bench
 - Inadequate qualification requirement for technical member (state and centre)
 - No provision for advocates to become judicial members
 - Other specialists such as Chartered Accountants also do not figure in the eligible GSTAT members
 - Inadequate term of judicial members

- Violative provisions pertaining to selection committee, appointment, reappointment, transfer, term and removal of members

- **Rules not in consonance:** Further, the Petitioner argued that the recently introduced Goods and Services Tax Appellate Tribunal (Appointment and Conditions of Service of President and Members), Rules, 2019 also do not appear to be in consonance with a recent SC decision⁴.

Interim order of the Delhi HC

- The HC observed that while the issue regarding the constitution of GSTAT was not before the SC in the recent ruling, the said ruling would have a serious bearing in the present case as well.
- Thus, the HC held that since the SC decision is binding on all concerned, the government is bound to ensure compliance therewith even in respect of GSTAT.
- Accordingly, the Delhi HC directed the government to examine the position as emerging from the recent SC's decision and to introduce appropriate amendments in the GST law so that the provisions are in line with the said decision.
- The matter has been listed for **5 February 2020**.

¹ Bharatiya Vitta Salahkar Samiti and Anr vs Union of India (W.P.(C) No. 6900 of 2018

² Section 109 and 110 of the Central Goods and Services Tax Act, 2017

³ Madras Bar Association v UOI [2010] 11 SCC 1

⁴ Rojer Mathew v. South Indian Bank Ltd.& Ors., Civil Appeal No. 8588/2019

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