

Appellate Tribunal under GST and Central Excise - A Comparative Study

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The imminent establishment of the Goods and Services Tax Appellate Tribunal (GSTAT), anticipated to commence operations by March 2025, marks a pivotal shift in India's tax dispute resolution landscape. This development is poised to significantly reduce the backlog of GST-related cases, offering a more streamlined and specialized forum for taxpayers. Unlike its predecessor, the Customs, Excise, and Service Tax Appellate Tribunal (CESTAT), which has been criticized for slower case disposal and large pendency due to limited benches, GSTAT is set to have benches in each state, ensuring faster resolution and enhancing the ease of doing business. This strategic move underscores the government's commitment to creating a more efficient and accessible tax adjudication system, tailored to the complexities of the GST regime.

This article will provide a comprehensive analysis of the differences between GSTAT and CESTAT, exploring their jurisdictions, compositions, functions, procedures, implications for taxpayers, and the evolving landscape of indirect taxation in India.

Following are the differences between GSTAT and CESTAT: -

Basis of difference	GSTAT	CESTAT
Basis of structure	It is a federal judicial body where both State and Centre have representatives.	CESTAT is a central quasi-judicial body established by the Central Government, with its members appointed to handle specialized tax disputes independently.
Establishment	GSTAT was established by the government following recommendations from the GST Council under Section 109 of the CGST Act, 2017.	CESTAT was established by the Central Government under Section 129 of the Customs Act, 1962.
Legislature	The Central Goods and Services Tax Act, 2017, The State Goods and Services Tax Act, 2017 and The Union Territory Goods and Services Tax Act, 2017	The Customs Act, 1962, The Central Excise Act, 1944 and The Finance Act, 1994 (Chapter V).
Benches	The principal bench of the Appellate Tribunal is in New Delhi with 31 new regional benches of the GSTAT will be situated across various cities namely: - various cities namely: - Ahmedabad, Allahabad, Bangalore, Vijayawada, Patna, Raipur & Chandigarh, Chennai, Hyderabad, Bilaspur, Delhi, Ahmedabad, Surat, Gurugram, Jammu, Ranchi, Bengaluru, Ernakulam, Bhopal,	The principal bench of CESTAT is located in New Delhi, along with 8 regional benches spread across various cities namely: - Ahmedabad, Allahabad, Bangalore, Vijayawada, Patna, Raipur & Chandigarh, Chennai, Hyderabad, Bilaspur, Delhi, Ahmedabad, Surat, Kolkata, Mumbai.

Mumbai, Pune, Nagpur, Cuttack, Jalandhar, Jaipur, Jodhpur, Chennai, Madurai, Hyderabad, Lucknow, Varanasi, Ghaziabad, Dehradun, Kolkata, Guwahati.

Composition and structure of the benches	<p>GSTAT comprises two types of benches: the Principal Bench, which includes the President, a Judicial Member, a Technical Member (Centre), and a Technical Member (State); and the State Bench, which consists of two Judicial Members, a Technical Member (Centre), and a Technical Member (State).</p>		
Qualifications for President	<p>According to section 110, the following individual can be appointed as a President of GSTAT if they:</p>		
	<table> <tr> <td data-bbox="550 1019 1029 1176"> <ol style="list-style-type: none"> 1. has been a Judge of Supreme Court, or 2. is or has been a Chief Justice of a high court. </td><td data-bbox="1029 1019 1517 1176"> <ol style="list-style-type: none"> 1. he is or has been a judge of a high court, or 2. one of the members of the Appellant Tribunal </td></tr> </table>	<ol style="list-style-type: none"> 1. has been a Judge of Supreme Court, or 2. is or has been a Chief Justice of a high court. 	<ol style="list-style-type: none"> 1. he is or has been a judge of a high court, or 2. one of the members of the Appellant Tribunal
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Qualifications of Judicial Member	<p>According to Section 110 of the CGST Act, 2017, a person can be appointed as a Judicial Member only if they:</p>		
	<table> <tr> <td data-bbox="550 1310 1029 1960"> <ol style="list-style-type: none"> 1. has served as a Judge of a High Court, or 2. has worked for a Combined period of ten years as a District Judge or Additional District Judge. 3. has been an advocate for 10 years with substantial experience in litigation in matters relating to indirect taxes in the Appellate Tribunal, Customs, Excise and Service Tax Appellate Tribunal, State Value Added Tax Tribunal, by whatever name called, High Court or Supreme Court. </td><td data-bbox="1029 1310 1517 1960"> <ol style="list-style-type: none"> 1. who has for at least for 10 Years held a judicial office in the territory of India, or 2. who has been a member of Indian legal service and has held a post in Grade I of that service or any equivalent or higher post for at least 3 years, or 3. who has been an advocate for at least 10 years. <p>A person who has held an office in the tribunal can be appointed as a judicial member in CESTAT.</p> </td></tr> </table>	<ol style="list-style-type: none"> 1. has served as a Judge of a High Court, or 2. has worked for a Combined period of ten years as a District Judge or Additional District Judge. 3. has been an advocate for 10 years with substantial experience in litigation in matters relating to indirect taxes in the Appellate Tribunal, Customs, Excise and Service Tax Appellate Tribunal, State Value Added Tax Tribunal, by whatever name called, High Court or Supreme Court. 	<ol style="list-style-type: none"> 1. who has for at least for 10 Years held a judicial office in the territory of India, or 2. who has been a member of Indian legal service and has held a post in Grade I of that service or any equivalent or higher post for at least 3 years, or 3. who has been an advocate for at least 10 years. <p>A person who has held an office in the tribunal can be appointed as a judicial member in CESTAT.</p>
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Qualifications of Technical	<p>According to Section 110 a</p>		
	<p>According to Section 129A of</p>		

A person who has held an office in the tribunal cannot be appointed as a judicial member in GSTAT.

members

Technical Member (Centre), shall be a person who:

1. is or has been a member of Customs and Central Excise the Indian Revenue Service, Group A, and has held the post of Principal Commissioner of (Customs and Indirect Taxes) Service, Group A, or Customs or Commissioner of
2. of the all-India Service with Customs or Central at least three years of experience in the Excise or any equivalent or higher administration of an post for at least three years. existing law or goods and services tax in the Central Government, and has completed at least twenty-five years of service in Group A;

Qualifications of members**of Technical**

Technical Member (State), shall be a person who:

1. is or has been an officer of the State Government or an officer of All India Service, not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax
2. or such rank, not lower than that of the First Appellate Authority, as may be notified by the concerned State Government, on the recommendations. of the Council and has completed twenty-five years of service in Group A, or equivalent, with at least three years of experience in the administration of an existing law or the goods and services tax or in the field of finance and taxation in the State Government:

Amendment of orders by tribunal

The Appellate Tribunal may amend any order passed by it so as to rectify any error apparent on the face of the record, **within a period of three months** from the date of the order.

The Appellate Tribunal may, at any time **within six months** from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it.

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Authority to Decline Appeals

The Appellate Tribunal may, in its discretion, refuse to admit any appeal where the tax or input tax credit involved or the amount of fine or penalty difference in tax or input tax credit determined by such order, does not exceed ₹ 200,000. or penalty determined by such order, does not exceed ₹ 50,000.

Fees for filing an appeal

Description	Fees	Total Interest, Penalty and Duty, Fees Demanded
For every ₹1 lakh of tax/input tax credit or fine/penalty involved	₹1,000	₹5 lakh or less ₹1,000 per ₹1 lakh.
Maximum fee	₹25,000	More than ₹5 lakh but not exceeding ₹50 lakh
Minimum fee	₹5,000	More than ₹50 lakh
Fee for appeals with no demand of tax, interest, fine, or penalty	₹5,000	₹5,000

Conclusion

Since the enactment of the Goods and Services Tax Act in July 2017, the establishment of the GST Appellate Tribunal remains pending, resulting in a substantial backlog of GST-related disputes at the appellate level. In a written response in the Lok Sabha, as reported by Business Standard on August 7, 2023, the Hon'ble Minister of State for Finance, Shri Pankaj Chaudhary, indicated that approximately 14,227 GST appeals are currently awaiting adjudication in various High Courts. The non-constitution of the GSTAT has created a pressing judicial burden, emphasizing the need for its expeditious establishment to facilitate effective GST dispute resolution.

A significant milestone was reached with the appointment of Justice (Retd.) Sanjaya Kumar Mishra as the President of the GSTAT on May 6, 2024.

Additionally, [Circular No. 224/18/2024 – GST, issued on July 11, 2024](#), provides interim guidelines for taxpayers with pending dues. Under these guidelines, taxpayers can make a pre-deposit via the Electronic Liability Register Part-II and submit an undertaking to their jurisdictional officer, declaring their intent to appeal once the tribunal is operational. This pre-deposit and undertaking will stay the recovery of any remaining demand.

However, despite the Finance Minister's recent assurance that GSTAT would be operational by the end of November, nothing substantial appears to have taken shape on the ground.

Whispers among tax professionals hint that GSTAT could kick off operations in select states as early as December 2024, offering a breath of relief to taxpayers and paving the way for faster GST dispute resolutions.

[1] Each state and Union Territory has its own GST Act to administer SGST (State GST). For example, in case of Delhi, applicable GST law is outlined in Delhi Goods & Services Act, 2017

[\[2\]](#) Kolkata Bench permanently closed.