



Lawgics

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Section 109 of CGST Act, 2017

109. Constitution of appellate tribunal and benches thereof.

(1) The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as "Regional Benches"), State Bench and Benches thereof (hereafter in this Chapter referred to as "Area Benches").

(3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

(4) The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

(5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.

(6) The Government shall, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:

Provided further that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:

Provided also that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.

(7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (5).

(8) The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches in a State.

(9) Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.

(10) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members:

Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

(11) If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

(12) The Government, in consultation with the President may, for the administrative convenience, transfer—

- a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or
- b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.

(13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.

(14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

Our Interpretation

Section 109
(Constitution
of GSTAT has
not been
notified yet)

This section pertains to **constitution of GST Appellate Tribunal (GSTAT) for** hearing appeals against the orders passed by the **Appellate Authority or Revisional Authority**.

1. Based on the recommendation of the GST Council, the Central Government, by Notification, shall constitute Goods & Service Tax Appellate Tribunal (GSTAT).
2. The powers of the Appellate Tribunal shall be exercisable by the **National Bench or Regional Benches, State Bench and Area Benches**.

3. **National Bench** shall be in **New Delhi** which shall be presided over by:

- President,
- One Technical Member (Centre)
- One Technical Member (State)

The GST Council in its 49th meeting, which was held in February 2023, had approved the creation of National Bench of the Goods and Services Tax Appellate Tribunal (GSTAT).

4. The **Regional Benches, State bench and Area Bench** shall consist of:

- Judicial Member,
- One Technical Member (Centre)
- One Technical Member (State)

5. The **National Bench** or **Regional Benches** shall hear the appeals only where one of the **issues involved relates to the place of supply**. The State Bench or Area Benches shall hear the appeals involving matters other than matters covering place of supply.

6. Jurisdiction of Judges (Members) under both National Bench and State Benches:

Single member:

- Demand in appealed order is up to Rs. 5 Lakhs
- Related to Tax, ITC, Fine, Fee or Penalty only
- Does not involve Question of Law

One Judicial and One Technical member:

- Demand in appealed order exceeds Rs. 5 Lakhs
- Related to Tax, ITC, Fine, Fee or Penalty, etc.
- Involves Question of Law
- Cases involving issue of place of supply- only by National Bench

7. In case of **difference of opinion** between the judges, the **President** shall refer case:

In Case of State Bench– Shall refer to another member of same State Bench or if no such State bench to a member of another State Bench

In Case of Principal Bench-Shall refer to another member of Principal Bench or if no such member to a member of any State Bench

8. The Case is to be decided on majority basis.

9. Power to transfer a technical member:

The Central Government can transfer a technical member in a State Bench to any Bench within the same State in which he was first appointed.

10. Validation of acts or proceedings:

GSTAT proceedings shall not be invalidated due to any vacancy or defect in constitution of GSTAT. No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely only on the ground of the existence of any vacancy or defect in the constitution of Appellate Tribunal.