

A miss!

The widely anticipated announcement on setting up of GST Appellate Tribunal finds a miss in the Union Budget 2023.

The delay in setting up of GST Appellate Tribunal has led to blockage of genuine refunds, accumulation of interest burden and uncertainty on legal positions.

While there are reports on setting up of GST Appellate Tribunal by December 2023, the actual roll out will remain a distant goal in absence of clear roadmap on appointment of members and infrastructural facilities.

Roadblocks

Composition of Benches, balanced Centre-State representation and appointment of members are some of the major roadblocks in roll out of the GST Appellate Tribunal.

The skewed ratio of Judicial and Technical members on the Benches and appointment of member of Indian Legal Services as a Judicial Member has already been declared as ultra vires the Constitution by the Madras High Court in **Revenue Bar Association vs. Union of India [(2019) 30 GSTL 584]**. While the matter is sub judice before the Supreme Court, the Government should look to rationalize the composition of Benches and qualification of members to make it legally sustainable.

Alternate

Jurisdictional writ courts may be approached in cases where there is a genuine business disruption or hardships being caused. Matters, such as where huge refunds are stuck & causing a literal business paralysis or confiscation of goods could *inter-alia* be few such instances.

In regular matters, one may await setting up of GST Appellate Tribunal to pursue appellate remedy against the order of First Appellate Authority.

One may also strategize particularly regarding the legality of interest accruals over this period of administrative inaction.

ELP's Insights

A robust dispute resolution mechanism under GST is the need of the hour considering the ever-increasing scrutiny of the Departmental Authorities and consequent litigation in the space.

The Group of Ministers on GST Appellate Tribunal constituted post recommendation in the 47th GST Council meeting, have made recommendations on the qualification of members and composition of Benches.

It is expected that the GST Council in its next meeting will deliberate upon these recommendations, followed by amendments in the Central and State GST Acts.