Allahabad High Court directs functioning of GST Tribunal latest by 1 April 2021

8 March 2021

In brief

Recently, the Allahabad High Court[1] has directed the Central Government to specify by notification under section 109(6) of the Central Goods and Service Tax Act (CGST Act), the creation of the State Bench of Goods and Services Tax Appellate Tribunal (GST Tribunal) at Allahabad and four Area Benches at Ghaziabad, Lucknow, Varanasi and Agra.

In detail

Facts

Place and number of Benches of GST Tribunal

- On 21 February 2019, the Uttar Pradesh State Government (UP State Government) originally proposed to the Secretary, Goods and Services Tax (GST) Council, New Delhi, to create the State Bench of GST Tribunal at Lucknow and 20 Area Benches in different districts of the State of Uttar Pradesh. Thereafter, the State Government sent a fresh proposal dated 5 March 2019 for the constitution of the State Bench at Allahabad and 19 Area Benches.
- As the GST Council Secretariat apprised the Uttar Pradesh State Government that the request to create 19 Area Benches is excessive, the State Government submitted a revised proposal dated 15 March 2019, proposing only four Area Benches instead of 19 Area Benches with the constitution of the State Bench at Allahabad.
- In a Public Interest Litigation filed by the Oudh Bar Association through Secretary, and another[2], the Allahabad High Court quashed the amended proposal dated 15 March 2019 and ordered that the earlier proposal dated 21 February 2019 is a reasoned one and considered that it shall be acted upon. It further observed that the GST Tribunal Benches should be constituted expeditiously within approximately three months.
- The creation of the State Bench of the GST Tribunal at Prayagraj (Allahabad) and Area Benches at Lucknow, Ghaziabad, Varanasi and Agra was approved in the thirty ninth meeting of the GST Council dated 14 March 2020.
- *Vide* letter dated 29 May 2020, the Commissioner Commercial Tax (Uttar Pradesh) communicated to the GST Council that the UP State Government has decided to create four benches of the GST Tribunal including the State Bench in Lucknow and three Area Benches in Varanasi, Ghaziabad, and Agra, respectively, instead of five benches of the GST Tribunal proposed by the State earlier.
- In the fortieth GST Council meeting dated 12 June 2020, the Council considered and approved the proposal dated 29 May 2020 for creating the State and Area Benches of the GST Tribunal for the State of Uttar Pradesh, i.e. State Bench at Lucknow and four Area Benches at Varanasi, Ghaziabad, Agra and Prayagraj.

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[1] 2021-TIOL-322-HC-ALL-GST

[2] Oudh Bar Association through Secretary, and another *v.* Union of India and Others Civil No.6800 of 2019

Remedy for filing appeal before GST Tribunal

- A batch of writ petitions were filed challenging several impugned orders (relating to questions of fact) on the ground that no GST Tribunal (being the last fact-finding authority) was constituted by the Government under section 109 of the CGST Act.

High Court’s decision

- The proposal of the State Government for the creation of a State Bench at Allahabad dated 5 March 2019 has not been quashed by any court nor has it been withdrawn by the State Government. Thus, the High Court quashed the proposal dated 29 May 2020 by the Commissioner, Commercial Taxes, Uttar Pradesh, which was in contradiction to the proposal made in the letter dated 5 March 2019. Recommendations made in the fortieth GST Council Meeting basis the aforesaid proposal of the Commissioner were set aside.
- The High Court recognised the grievance of the dealers of the State of Uttar Pradesh, where a GST Tribunal under the CGST Act is not available for preferring appeals under section 112 of the CGST Act/ Uttar Pradesh GST Act, and that they were left without remedy.

High Court’s directions

- The High Court gave the following directions in view of the legislative mandate of section 109(6) of the CGST Act:

Place and number of Benches of the GST Tribunal

- The GST Council shall forward its recommendation of thirty ninth GST Council Meeting held on 14 March 2020 to the Central Government within two weeks from the date of the judgement, i.e. 9 February 2021.
- The Central Government shall notify within the next four weeks, the State Bench of the GST Tribunal at Prayagraj (Allahabad), and four Area Benches at Ghaziabad, Lucknow, Varanasi and Agra, in the State of Uttar Pradesh.
- The State Bench and the Area Benches of the GST Tribunal to be made functional earliest from 1 April 2021.

Remedy for filing appeal before GST Tribunal

- The petitioners are open to challenge the impugned orders, which were the subject matter of the Writ Petition, before the GST Tribunal as and when constituted.
- Until the expiry of limitation for filing appeals, no coercive action shall be taken against the petitioners pursuant to the orders of the Assessing/ Appellate authorities.
- Liberty is granted to the petitioners to avail such other remedy available to them, which have not been considered and decided by this judgment.

The takeaways

The absence of a GST Tribunal under the CGST Act has been a long-drawn issue, which has led to much pending litigation, without any further access to appeal and obtain relief. The High Court’s direction not to initiate recovery until the limitation to file appeal expires would provide great relief to taxpayers.

While the High Court has directed that the GST Tribunal should be made functional form 1 April 2021, it is also important to note that earlier, the Madras High Court had struck down the provisions relating to the constitution of the GST Tribunal as unconstitutional.[3] The Supreme Court[4] (in two decisions) laid down guidelines with regard to the constitution of a GST Tribunal not only under the CGST Act but also under various other laws such as the Income-tax Act, 1961, etc. The guidelines laid down by the Supreme Court were also discussed during the thirty ninth GST Council Meeting held on 14 March 2020.

[3] Revenue Bar Association *v.* Union of India W.P. Nos. 21147, 21148 and 14919 of 2018 (Madras High Court)

[4] Kudrat Sandhu *v.* UOI and others WP(C) No. 279 od 2017 (SC) and Madras Bar Association *v.* Union of India WP (C) No.804 of 2020 (SC)

The industry was hopeful that amendments to sections 109 and 110 of the CGST Act would be proposed in the Finance Bill, 2021-22, in accordance with the Supreme Court's guidelines. In view of the inconvenience and hardships caused to the taxpayers, it is expected that that the Government will take swift action in this regard in light of the stringent timelines stipulated by the Allahabad High Court in the above decision.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact your local PwC advisor.

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