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INTRICATE ISSUES UNDER GST DEMANDS FUNCTIONAL GSTAT



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Ever since the conceptualization and implementation of the GST Law in India. The trade and industry including service sector is evolving hand in hand with GST law which has resulted in the emergence of new concept and new challenges as well as questioned the old principles and practices.

The evolution of GST Law in India, has led to emergence of those subject and issues which finds its solution in more than one Legislation. Thereby, solidifying the immediate need of the fully functional effective GSTAT, which can help to bring a harmonious, balanced and fair solution for the betterment and ease of business in India.

With the launch of the Goods and Services Appellant Tribunal by the Hon'ble Finance Minister of India, Shri. Nirmala Sitharaman on September 24, 2025 in New Delhi. The GSTAT has to confront with matters which may result in the adjudication of landmark issues at a national scale which would further achieve the ultimate noble object of the GST as "One Nation, One Tax and One Market".

EVOLVING ISSUES AND NEED OF EFFECTIVE ADJUDICATION:

A. The concept of Barter in GST.

The recent landmark decision delivered by Hon'ble High Court of Jammu & Kashmir and Ladakh at Srinagar in the case of New Gee Enn & Sons vs. Union of India & Ors., WP(C) 1938/2024, wherein the Bench comprising of Hon'ble Mr. Justice Sanjeev Kumar & Hon'ble

Mr. Justice Sanjay Parihar re-affirmed that the territory within the limits of "Pakistan Occupied Kashmir" across Line of Control 'LoC' is Indian territory. Hence, barter trade across Line of Control 'LoC' is nothing but an Intra-State Sales/Supply within the definition of GST laws.

This pertinent issue of 'supply of goods and service' by way of category of 'Barter' as included under "supply" specified in Section 7 of the CGST/SGST Act, 2017 needs to be addressed at the level of Ministry of Finance, Government of India as it pertains to the larger concept of barter trade and it's taxability under new regime of GST. Presently there is neither any Guidelines for 'barter' in general nor any Exemption Notification exists for 'Barter trade across LoC'. Therefore, this judgement has presented the Government with an opportunity to prescribing relevant Rules & Corresponding GST Forms regulating 'Barter system of Trade' and issuing required Notification as at present almost all the Rules & Notifications are drafted pertaining to transactions wherein "money value in currency" is involved, but "Barter" doesn't have monetary value in currency.

The GSTAT being a last fact finding court shall throw tangible light on the necessary ingredients and attributes of 'barter' to have a fair adjudication at the lower level on the basis of available facts and circumstances of each case.

B. Taxability of Long Term Lease in GST:

Short-Term Lease vs. Long-Term Lease in GST - Comparison:

Feature	Short-Term Lease/Renting	Long-Term Lease/Assignment
1. Nature of Transaction	Supply of "renting of immovable property" service.	Interpretation is debated: some see it as a "supply of service," others as a "transfer of immovable property" (akin to sale).
2. GST Applicability	Generally taxable at 18% GST for commercial purposes.	Varies by interpretation/jurisdiction; ranges from no GST (High Courts) to 18% GST (AARs).
3. Governing Law	Falls under Schedule II of CGST Act ("leasing... to occupy land is a supply of services").	Debate centers on whether it falls under Schedule II (taxable service) or Schedule III (excluded from GST as "sale of land").

Long-Term Lease - Definition: Refers to leases of significant duration, often 30, 60, or 99 years, often with a large upfront premium/salami and nominal ground rent. The taxability of long-term lease assignments (e.g., 99 years) is subject to divergent rulings by High Courts and tax authorities due to differing legal interpretations. The GSTAT is needed to provide a uniform, binding resolution.

Divergent Rulings in High Courts and Tax Authorities on long term lease-

The conflict is stark between judicial bodies:

- High Courts (e.g. Gujarat & Bombay): No GST on long-term assignment.
- Gujarat High Court: In KP Engineering Ltd and in other plethora of judgement held that an outright assignment of a 99-year lease is an "interest in immovable property," which should be treated as a transfer of land and therefore falls under the exclusion in Schedule III of the CGST Act. They argue against double taxation (GST + stamp duty).
- Bombay High Court and its two distinct Approach:
- Panacea Biotech Approach resonating the Gujarat High Court view, the Bombay High Court held that the Transfer of the lease that to long term is akin to sale under TPA and hence, comes under the Purview of Schedule III and hence, is exempted

- Hon'ble Bombay High Court in the Builder Association case was dealing with the question of the justifiability of GST levy on a one-time lease premium paid on supply of leasehold rights for 60 years on land allotted by CIDCO. The court upheld the validity of the GST levy on such consideration on the basis that such a long-term lease cannot be deemed akin to the sale of land. Moreover, the lease has been covered within the ambit of supply irrespective of the tenure.
- However, in the recent landmark Judgement of the Nagpur Bench of the Bombay High Court in *Aerocom Cushions Private Limited vs. Assistant Commissioner, Cgst & Anr, Writ Petition 2145 of 2025*, the High Court quashed the Show Cause Notice issued by the Respondent and held that assignment by sale and a transfer of leasehold right of the plot of land allotted by MIDC to the lessee in favor of third party-assignee for a c o n s i d e r a t i o n s h a l l b e assignment/sale/transfer of benefits arising out of immovable property by the lessee-assignor in favor of third party and in such circumstances, the transaction would not be subject to levy of GST in terms of the GST Act.
- Reasoning by Tax Authorities: They argue

that the transaction is a "supply of service" under Schedule II, as the lessee never had absolute ownership of the land. The transfer is merely a right to occupy and use for a period, which is a taxable service. They argue that the exclusion in Schedule III is limited to the outright sale of freehold land, not a time-bound transfer of rights.

National issues arising due to absence of a Uniform Judgement

- **Constitutional Aspects:** There are also arguments that taxing these transactions might infringe on the states' constitutional power to tax land and buildings.
- **Double Taxation:** In cases where GST is demanded, it results in double taxation, as these transactions already attract substantial stamp duty and registration charges under state laws.
- **Increased Project Costs:** The potential application of 18% GST on high-value long-term leases significantly increases project costs for the real estate, industrial, and infrastructure sectors, which can deter investment and impact economic growth.
- **Compliance Burden and Litigation:** Due to ambiguity in the law because of the facts about the lease terms not yet being deciphered as the opportunity was not available with the GSTAT, the statutory courts also could not analyze the law based on the determined facts. Thus, businesses are burdened with compliance issues, including potential demands for tax, interest, and penalties for past transactions relating to the lease of land and buildings. This also raises complex issues regarding the availability of Input Tax Credit (ITC).
- **Jurisdictional Disparity & Uneven Playing Field:** The tax treatment of the same transaction can vary depending on the state or jurisdiction where the property is located and which court's ruling applies. This creates an uneven playing field for businesses operating across different states.
- **Hampering Investment in Real Estate & Infrastructure Development:** The real estate & infrastructure development sector

relies heavily on land transactions. The confusion over GST liability on long-term leases deters investors and developers, impacting project viability and overall economic growth in the sector.

GSTAT Solution: Having a functional Tribunal from very beginning this question based on the facts would have been answered more transparently, fairly and exhaustively as the issue would have been factually deciphered by the last fact finding forum.

C. Taxability of Corporate Guarantee under GST:

A corporate guarantee is a contractual agreement where one company (the guarantor), typically a holding company, promises to discharge the liability or fulfill the obligations of another company (the principal debtor, often a subsidiary) to a lender (creditor) in case of a default. It acts as a form of indirect security, providing assurance to the lender and helping the borrower secure loans or better credit terms. The absence of a functional GSTAT led to High Courts issuing divergent judgments, including interim stays and remands, which created uncertainty.

Core issues and challenges around Corporate Guarantee

- **Is a corporate guarantee a "supply"?** Tax authorities argue that corporate guarantees between related parties, even without explicit consideration, constitute a taxable service under Schedule I of the CGST Act. This is challenged by corporations who argue that it is merely a shareholder function or a financial instrument, not a taxable service. Even though a circular has been issued granting exemptions in certain limited cases, but, the Tribunal can permanently settle the issue with proper legal wisdom based on practical & factual matrix involving corporate guarantees in general.
- **Valuation challenges:** The GST Council's insertion of Rule 28(2) in October 2023 prescribed a deemed value of 1% per annum of the guaranteed amount, or the

actual consideration if higher, for guarantees between related parties located in India. This valuation has been challenged as arbitrary and potentially burdensome, particularly for corporations that are not eligible for full input tax credit.

- Disputed periods and refunds: The retrospective effect of the rules and circulars, especially for guarantees issued or renewed prior to October 26, 2023, has left corporations with uncertainty regarding past tax positions and the possibility of refunds for already paid taxes.
- Contingent nature: The argument that a corporate guarantee is a contingent contract, thus the “supply of service” as envisaged under GST may only arise upon its enforcement which further complicates the taxability, as GST is currently levied upfront without the eventuality of corporate guarantee being enforced.

High Court’s divergent views-

Prior to the functioning of the GSTAT, numerous writ petitions challenging the GST circular on corporate guarantees led to inconsistent judicial pronouncements from different High Courts.

- Bombay High Court: Granted an interim stay on the GST Circular No. 204/16/2023-GST, in a petition filed by Vedanta, which temporarily suspended the levy of GST on corporate guarantees.
- Delhi High Court: Issued a notice in response to a petition filed by Sterlite Power Transmission and directed that no coercive action be taken against the petitioner.
- Punjab & Haryana High Court: In a similar case, also stayed the effect and operation of the circular, stating that it should not influence the decision of appellate authorities.
- Madras High Court: Remands vs. Final Rulings: In October 2025, the Madurai Bench of the Madras High Court in the case of M/s. Shri Amman Steel and Allied Industries Private Limited v. The State Tax

Officer – V (W.P(MD)No.20128 of 2025) quashed an assessment order and remanded the matter back to the adjudicating authority. The key reason for the court's decision was the assessing officer's failure to consider the relevant CBIC Circulars (specifically Circular No. 199/11/2023-GST dated July 17, 2023, and Circular No. 210/4/2024-GST dated June 26, 2024) that clarify valuation rules for corporate guarantees under the CGST Act. The court noted the well-settled principle of administrative law that an order becomes legally vulnerable if a specific defense or contention raised by the assessee is not considered in the final order. The matter was sent back to the authority for fresh adjudication after properly considering the petitioner's submissions and the relevant circulars.

D. Theory of De-minimis

The theory of De-minimis is based on the Latin maxim *de minimis non curat lex*, which means that the law does not care for trifles (trivial matters) is based on a minor calculation error which cannot be labelled as defiance of law and will not amount to a default. In case the short payment is insignificant, then the concept of De-minimis would be applicable even if the act of the appellant is considered as default because law does not care for trifles.

The theory of De-minimis is presently applicable in Anti-Dumping matters, can the GSTAT extend its application to the GST matters also, especially considering the digital involvement where a very small difference may disentitle certain benefits to the taxpayers otherwise provided in the Law.

E. Safari Retreat vis-à-vis Supreme Court Judgement

In the Judgment of Chief Commissioner of Central Goods and Service Tax vs. Safari Retreats Pvt. Ltd. (2024) 23 Centax 62 (S.C.), it was held that the expression "plant or machinery" used in Section 17(5)(d) cannot be given the same meaning as the expression "plant and machinery" defined by the explanation to Section 17. An amendment

nullifying the effect of the Hon'ble Supreme Court judgement has been given retrospective effect which would bring lot of issues before GSTAT. There is a difference between the phrase “plant or machinery” & “plant and machinery” as single expression ‘plant’; ‘machinery’ carries different meaning and scope whereas expression “plant and machinery” together would carry entirely different meaning and scope.

Therefore, pertinent facts as determined by lower authorities and then examined by the last fact-finding Court GSTAT in determining the scope of each of the three expressions i.e. individually ‘plant’; ‘machinery’ as well as phrase ‘plant and machinery’ together shall bring light on this very important issue concerning large number of taxpayers.

F. Other Conceptual and Technical Issues Leading to Dismissals/Stays

The absence of a functional Goods and Services Tax Appellate Tribunal (GSTAT) led to issues where High Courts often dismissed GST writs and appeals on the ground of an alternate statutory remedy, while in other cases, they stayed proceedings or issued divergent solutions, highlighting the urgent need for GSTAT. The High Court's often dismiss or stay GST related petitions on the following grounds:

- **Challenges of Tax Department:** The tax department faces challenges in consistent enforcement of the law. Without a clear, uniform directive, field officers may apply different standards, leading to disputes and potential revenue leakage or over-collection depending on the interpretation applied.
- **Compliance Complexity:** For large corporations with Pan-India operations, managing compliance becomes difficult when a single type of transaction is treated differently for tax purposes in various location.
- **Availability of Alternative Remedy:** The most common reason for dismissal is the principle that writ jurisdiction should not be invoked when an effective alternative

remedy exists under the statute. Courts have generally been reluctant to entertain petitions challenging show cause notices or assessment orders where a statutory appeal was provided unless, there is a gross violation of natural justice or fundamental rights or the provisions invoked were itself ultra-vires.

- **Place of Supply Mismatches:** Cases where an incorrect place of supply was inadvertently mentioned leading to notices demanding ITC reversal which are being litigated in High Courts but such issues shall be taken up by Principle Bench of GSTAT.
- **No Recovery Proceedings:** The Delhi High Court stayed the petition filed by M/s Welcut Industries, which challenged an Order-in-Appeal confirming a demand of ₹27,000, arguing that the appellate remedy under Section 112 was not effectively available due to the non-operational status of the GSTAT. Herein, the Delhi High Court examined whether recovery proceedings could be initiated against a taxpayer in the absence of a functional Goods and Services Tax Appellate Tribunal (GSTAT), particularly when the taxpayer was willing to comply with the mandatory pre-deposit requirement under Section 112(8) of the Central Goods and Services Tax Act, 2017. The Division Bench held that no recovery action can proceed when the statutory appellate forum is unavailable. The Court directed the petitioner to deposit 10% of the disputed demand by 15 November 2025, after which recovery of the remaining demand would remain stayed until the GSTAT becomes functional. It was further clarified that the deposited amount shall be treated as the statutory pre-deposit for the appeal once the Tribunal starts functioning.
- **Technical Errors and Non-Compliance:** Petitions are sometimes dismissed due to technical defects in filing, such as missing documentation, improper verification, or not paying the mandatory pre-deposit

amount required for an appeal or failing to produce a physical invoice during transit as mandated by the rules, or failure to comply with statutory time limits or pre-deposit requirements.

- Bogus Invoices/Irregular Notices, where the adjudicating authority didn't properly address the factual matrix behind the Bogus Invoices and when the assessee didn't have the proper notice of the proceedings.
- Time-Barred Appeals: If an appeal is filed beyond the maximum condonable period provided for under the Act (e.g., Section 107 or 112), High Courts typically dismiss the writ petition, as they cannot use their extraordinary jurisdiction to override statutory time limitations.
- Factual Disputes: High Courts generally avoid getting into intricate factual disputes or issues involving non/improper consideration of evidences (e.g., authenticity of transactions, invoice errors, or specific calculations, valuation, compliance issues etc) which are better suited for specialized and last fact-finding Court like the GSTAT. Therefore, the High Courts often direct the parties to pursue the statutory route once the Tribunal is functional.
- Constitutional Validity vs. Administrative Error: High Courts generally focus on questions of law or the constitutionality of the law itself. Writs challenging defective decisions or procedural infirmities that don't involve fundamental rights or legal principles are often stayed or dismissed pending the Tribunal's formation. Now the aggrieved person has an opportunity to get the issue examined on factual basis by the Tribunal.

Divergent Solutions of High Courts on multifarious issues-

The lack of a GSTAT has led to conflicting judgments across High Courts on critical GST issues, creating significant legal uncertainty and impacting the "one nation, one tax" objective. Examples of divergent

rulings include:

- Issuance of Consolidated SCN involving Multiple FYs: Different HCs have adjudicated divergently upon the validity of issuance of consolidated SCNs involving Multiple Financial Years. However, in one case of M/s Mathur Polymers vs. Union of India (2026) 38 Centax 135 (S.C.), the Supreme Court affirmed that such SCNs are valid in cases involving allegations of fraudulent availment of ITC across multiple years. It is pertinent that there be guidelines from the GSTAT for determining the validity of such consolidated SCNs where limitation periods for multiple FYs are different unlike the above-mentioned case.
- Classification and Valuation: Disagreements on the HSN (Harmonized System of Nomenclature)/ SAC (Service Accountancy Code) codes and appropriate tax rates for specific goods or services (e.g., classification of "lottery" or "e-commerce services") have resulted in varied tax liabilities depending on the jurisdiction. Whether the Goods/Service in question is "General" or "Luxury Item" depends upon factual trade evidence, which GSTAT will examine comprehensively before a matter can reach the High Court on a "question of law". Furthermore, GSTAT Benches consists of both Judicial and Technical Members. Thus, the technical classification are judged in depth by experts who understand the nuances of the HSN framework and the GST.
- Input Tax Credit (ITC) Eligibility: Varying interpretations on the conditions for availing ITC, particularly on common area maintenance (CAM) charges, rent-a-cab services, or the interpretation of Section 16(2)© regarding matching of returns. For example, some courts have ruled that technical deficiencies (like an incorrect GSTIN on an invoice) should not deny genuine ITC claims, while others have strictly interpreted the letter of the law.
- Transitional Credit Issues: Different High

Courts have issued conflicting rulings on the validity of claims for transitional credits under the old tax regime, particularly concerning the deadlines and conditions for filing forms TRAN-1 and TRAN-2. Moreover, the matter of transitional credit still pending with the High Court shall be directed to Tribunals as these matters largely pertain to deciphering the accounts and the factual position.

- **Refund Claims for Exporters or Inverted Duty Structure:** Divergent views on the calculation of refund amounts for export of goods and services or zero-rated supplies or under an inverted duty structure or the inclusion of input services in the refund calculation have created inconsistencies in benefits for exporters and other dealers across different states. These issues being primarily factual shall be decided by the Tribunal.
- **Procedural Requirements:** Different Benches of High Courts have issued conflicting guidance on the necessity of physical documents versus digital copies during the movement of goods, or the validity of orders lacking a Document Identification Number (DIN). These issues being primarily factual shall be decided by the Tribunal.

GSTAT & Way Forward:

The Goods and Services Tax Appellate Tribunal (GSTAT) is designed to provide a uniform, efficient, and specialized forum for resolving GST disputes.

- **Consistent Rulings:** GSTAT will ensure greater consistency in GST interpretations across India. It is envisioned as the first common appellate forum for disputes between the Tax Payers and the Revenue on GST Issues, aiming to reduce the confusion caused by divergent decisions of the lower authorities.
- **Faster Resolution:** Appeals that previously went directly to the High Courts will now be handled by GSTAT, which is a dedicated forum for GST matters. This is expected to

speed up the resolution of disputes, providing clarity and certainty for businesses.

- **Final Fact-Finding Authority:** The GSTAT is envisioned as the final fact-finding body, whose decisions on factual matters can then be appealed to the High Court or the Supreme Court only on questions of law, streamlining the overall litigation process.
- **National Appellate Authority for Advance Rulings (NAAAR):** The Principal Bench of GSTAT will also serve as the NAAAR, harmonizing conflicting Advance Rulings from different states. This will prevent multiple interpretations of similar legal issues. Its primary role is to provide a single, authoritative interpretation of GST law across the country, ensuring the "one nation, one tax" principle is upheld and eliminating divergent High Court judgments.
- **Anti-profiteering (Section 171):** The primary goal of the anti-profiteering mechanism is to ensure that businesses pass on the benefits of reduced GST rates or increased Input Tax Credit (ITC) to consumers through a commensurate reduction in prices. The Principal Bench of the Goods and Services Tax Appellate Tribunal (GSTAT) currently handles all matters related to GST anti-profiteering. This change was effective from October 1, 2024, when the GSTAT took over the functions previously held by the Competition Commission of India (CCI). **GSTAT Principal Bench is responsible for all existing and pending anti-profiteering cases filed before the sunset date.** **Sunset Clause:** No new anti-profiteering complaints can be filed after April 1, 2025, marking the end of the anti-profiteering provisions for new cases.
- **Reduced Litigation:** A ruling from the GSTAT will provide certainty to businesses and reduce the extensive, costly litigation that currently results from these conflicting interpretations, avoiding the need to approach different High Courts.

The Supreme Court's final decision will be the ultimate binding authority, but GSTAT will handle the majority of future disputes being factual in nature with that precedent in mind.

- **Binding Precedent:** A GSTAT ruling would set a clear precedent for all lower authorities under its jurisdiction, preventing the need for every business to litigate the same issue in different courts.
- **Efficiency:** By having a specialized tribunal, cases can be resolved faster than going through the overburdened High Courts, providing much-needed clarity and certainty for the business and industry. With the GSTAT now being established, it is expected to bring uniformity in legal

interpretation, streamline the dispute resolution process.

Conclusion

Despite the minimal curable short-comings the authors along with the tax-payer, the GST Departments of both Center as well as States & and rest of the Nation, have full faith and belief in the GSTAT. Furthermore, the GSTAT is a welcoming and a noble step of the Government of India as it will be the final fact finding authority for a nation-wide solution of the GST matters, thereby eliminating the conflicting and confusing precedents before the taxpayer and taxing authorities and giving a uniform solution to the people of India, resulting in smooth and seamless application of GST Law.

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