

Preparing for Practice Before the GST Appellate Tribunal (GSTAT): A Guide for Young Tax Lawyers

The upcoming constitution of the GST Appellate Tribunal (GSTAT) heralds a new phase in the GST litigation framework. For a tax lawyer, this is a pivotal moment to equip oneself with the necessary skills in advocacy, drafting, language, and procedure. This note serves as a comprehensive guide to help tax professionals prepare themselves for effective practice before the GSTAT—both in filing appeals and in arguing them.

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I. Understanding the GSTAT: An Appellate Forum

The GST Appellate Tribunal is a quasi-judicial authority set up under Section 109 of the CGST Act, with jurisdiction over substantial questions of law and fact. It is the second appellate authority under the GST regime, after the First Appellate Authority. GSTAT will be the most significant platform for litigating contentious issues before they reach the High Court.

Hence, a tax lawyer appearing before GSTAT must be equipped with:

1. A deep understanding of GST law, rules, and judicial precedents.
2. Sharp drafting skills.
3. Strong oral advocacy, with proficiency in spoken English.
4. Knowledge of courtroom etiquette and presentation techniques.

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II. Preparing to File an Appeal Before the GSTAT

1. Understanding the Appellate Process

Appeals before GSTAT will be governed by:

- Section 112 of the CGST Act
- Procedural rules notified under the CGST Rules
- Practice directions issued by the Tribunal (once notified)

2. Steps to File an Appeal

A tax lawyer must:

- Review the Order-in-Appeal passed by the First Appellate Authority.
- Identify substantial errors of law and/or fact in the order.
- Determine the limitation period: Generally 3 months from communication of the order (extendable by 3 months).
- Ensure pre-deposit of 20% of disputed tax, including the 10% already paid at first appeal stage.



III. Drafting Before the Tribunal

1. Statement of Facts (SOF)

The Statement of Facts must be:

- Chronological and coherent.
- Precise, with only relevant details.
- Free from argument or emotion—just the facts.

Example:

“The appellant is engaged in the supply of construction services. On 12.01.2023, a search was conducted at its premises. A show cause notice dated 15.03.2023 was issued alleging suppression of taxable turnover. The appellant replied on 28.03.2023 contesting the allegations. The Adjudicating Authority passed the impugned order on 01.06.2023 confirming the demand...”

2. Grounds of Appeal

The grounds should:

- Be concise, numbered, and stated in third person passive form.
- Avoid repetition.
- Cover legal, procedural, and constitutional aspects, where applicable.

Example:

“Because the impugned order is vitiated by violation of principles of natural justice inasmuch as the appellant was not granted an effective opportunity of personal hearing...”

“Because the adjudicating authority failed to consider relevant documents placed on record, leading to an erroneous confirmation of demand...”

3. Drafting Cross Objections

Cross objections may be filed when the department appeals but the assessee is satisfied with the lower order. However, the assessee may raise certain clarificatory or protective submissions.

Sample Phrases:

“Without prejudice to the appellant’s primary contention that the appeal is not maintainable, the following cross-objections are filed to clarify that...”

IV. Stay Petitions and Application for Interim Relief

Drafting a Stay Petition

Key ingredients:

- Clearly mention the quantum of demand and amount already deposited.
- Specify financial hardship, if any.
- Mention prima facie case, balance of convenience, and irreparable harm.

Sample Submission:

“It is submitted that the appellant has a strong prima facie case, as the impugned order suffers from multiple jurisdictional and legal infirmities. The appellant has already deposited 20% of the disputed tax. Recovery of the balance amount would cause irreparable harm to the ongoing business of the appellant. The balance of convenience lies in granting a stay.”

Prayer: “It is therefore prayed that recovery proceedings pursuant to the impugned order be stayed till disposal of the appeal.”

V. Preparing for Oral Arguments Before GSTAT

1. Structure Your Arguments

Prepare a Brief Note of Submissions, ideally in the following format:

- Introduction of facts (brief)
- Issues involved (framed in points)
- Legal submissions with citations
- Factual rebuttal
- Prayer for relief

2. Practice Makes Perfect

- Rehearse your opening lines and important submissions aloud.
- Anticipate likely questions from the Bench and prepare answers.
- Be ready to summarize your arguments in 5 minutes, if required.



VI. Courtroom Etiquette Before the Tribunal

Always remember:

- Dress formally, preferably in professional attire or gown if prescribed.
- Begin with “May it please Your Honours”.
- Address the Bench collectively as “Your Honours” or individually as “Your Lordship” or “Sir/Madam” as per convention.
- Avoid raising your voice; never interrupt the Bench or the opposing counsel.
- Ask politely: “With your kind permission, may I proceed?”
- If a question is posed, listen attentively and respond concisely.
- Keep your documents properly flagged and marked.



VII. Language Preparation: Spoken English, Grammar, and Drafting Skills

A tax lawyer's proficiency in English significantly enhances:

- Drafting quality
- Clarity of submissions
- Persuasiveness in oral arguments

1. Improving Spoken English

- Watch court arguments on YouTube (especially from Indian High Courts or Supreme Court).
- Practice reading legal texts aloud to improve diction and confidence.
- Record yourself explaining a legal point in English—then play it back to evaluate tone, clarity, and pace.

Example Practice Line:

“The primary issue before this Hon’ble Tribunal is whether the appellant’s activity constitutes a composite supply or a mixed supply under Section 8 of the CGST Act.”

2. Grammar and Drafting

- Use tools like Grammarly, but also study Wren & Martin or Garner’s Legal Writing in Plain English.
- Draft multiple versions of a paragraph to refine precision and brevity.
- Avoid passive verbs like “is being done”—use “is done” or “was done” where clarity improves.
- Read good judgments and legal magazines like AIFTP Journal, CTR, ELT, and note the style.

Compare:

Poor: “The appellant is not happy with the way the adjudication order has been passed.”

Better: “The appellant respectfully submits that the impugned order suffers from legal infirmities.”

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VIII. Final Tips and Best Practices

1. Stay updated: Read case laws, notifications, and circulars daily.
2. Maintain a repository of templates: for SOF, Grounds, Stay, Cross-Objections, etc.
3. Attend moot courts, if possible, or simulate arguments with peers.
4. Get feedback from senior advocates or mentors.
5. Focus on substance and structure over verbosity.

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Conclusion

The GST Appellate Tribunal will be a platform where tax lawyers will be judged not just on their knowledge of GST law, but also on their ability to argue persuasively, draft meticulously, and present with poise and discipline. Preparing for it requires commitment to legal skill-building and self-improvement. With consistent practice in language, drafting, and advocacy, any dedicated tax lawyer can become a formidable counsel before the Tribunal.