



# APPEAL AND REVISION MECHANISM UNDER GST

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This article summarizes the various provisions of statutory right of appeal and revision available to an aggrieved person against any decision or order passed by the adjudicating authority under the provisions of Central Goods and Services Tax Act, 2017 and CGST Rules, 2017 (herein after referred as the “Act” or “Rule”).

## **1<sup>st</sup> level Appeal/Application before Appellate Authority U/s 107:**

(1) any person aggrieved by any decision or order passed by an adjudicating authority under this Act or SGST/UTGST, may appeal to the prescribed Appellate Authority within three months from the date on which the said decision or order is communicated to such person.

Under Rule 109A, Appellate Authorities may be Commissioner of Central Tax (Appeal) or Additional Commissioner of Central Tax (Appeal) or Joint Commissioner of Central Tax (Appeal) depending upon the Authorities who have passed the impugned order or decision as follows:

(a) Commissioner (Appeals) where such decision or order is passed by the Additional or Joint Commissioner;

(b) Any officer not below the rank of Joint Commissioner (Appeals) where such decision or order is passed by the Deputy or Assistant Commissioner or Superintendent.

(2) the Commissioner may, on his own motion, or upon request from the Commissioner of SGST/UTGST, call for and examine the record of any proceedings in which an adjudicating authority has passed any decision or order under this Act or SGST/UTGST, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of relevant points arising out of the said decision or order.

The authorised officer making an application to the Appellate Authority shall be treated as an appellant and the provisions of this Act relating to appeals shall apply to such application.

## **Procedure to file Appeal/Application under Rule 108:**

(3) Appeal/Application under section 107(1)/(2) shall be filed before Appellate Authority in Form APL-01/03 respectively with grounds of appeal and other relevant documents (provisional acknowledgement is issued immediately). Certified copy of the order or decision, appealed against, shall be submitted within seven days of filing appeal and in that case, date of filing appeal shall be considered the date of provisional acknowledgement. However, if the certified copy of the order or decision appealed against is not submitted within seven days, its actual date of submission shall be the date of filing appeal. Final acknowledgement shall be issued in Form APL-02.

(4) The Appellate Authority may condone delay in filing appeal with sufficient cause to its satisfaction for a further period of one month beyond specified period of three months or six months, as the case may be.

(5) Appeal and other documents shall be submitted electronically and digital signature certificate shall be verified as per provisions of IT Act, 2000 (Rule 26).

## **Concept of Pre-deposit under section 107:**

(6) -before filing appeal, tax payer is required to deposit an amount (pre-deposit) - (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and (b) a

sum equal to ten per cent of the remaining amount of tax in dispute arising from the said order, subject to a maximum of twenty-five crore rupees, (fifty crore rupees in IGST).

(7) Once the pre-deposit amount is paid, the recovery proceedings for the balance amount shall be deemed to be stayed.

**Proceedings before Appellate Authority U/s 107:**

(8) The Appellate Authority shall have to give an opportunity to the appellant/respondent of being heard.

(9) The Appellate Authority on sufficient cause and reasons to be recorded in writing may grant adjournment for not more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may allow submission of additional ground of appeal at the time of hearing, if it is satisfied that the omission of that ground from the original grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against, but shall not refer the case back to the adjudicating authority that passed the said decision or order.

An order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order.

Further, where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority shall be a speaking order stating in writing the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority is advised to hear and decide every appeal within a period of one year from the date on which it is filed.

Where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) The Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order shall also be sent to the jurisdictional CGST/SGST/UTGST Commissioner.

(16) Subject to the provisions of section 108 (Revision) or section 112 (appeal to Appellate Tribunal) or section 117 (appeal to High Court) or section 118 (appeal to Supreme Court), every order shall be final and binding on the parties.

**Revisional Authority:**

By-passing the Appellate Authority, tax payer aggrieved to a decision or order passed by adjudicating authority may approach to the Revisional Authority for remedy where there is no condition of pre-deposit. Notification no. 05/2020- Central Tax, dated 13<sup>th</sup> January 2020, authorizes following officers as Revisional Authorities:

(a) Principal Commissioner or Commissioner of Central Tax for decisions or orders passed by the Additional or Joint Commissioner of Central Tax; and

(b) Additional or Joint Commissioner of Central Tax for decisions or orders passed by the Deputy Commissioner or Assistant Commissioner or Superintendent of Central Tax.

### **Concept of Revision U/s 108:**

(1) The Revisional Authority, on his own motion, or upon information received by him or on request from the Commissioner of SGST/UTGST, or on observation by the C&G of India, may stay operation of any decision or order passed by his subordinates, if he considers it as erroneous, prejudicial to the interest of revenue, illegal or improper and after giving the adversely affected person a notice in Form RVN-01 and an opportunity of being heard, pass such order in Form APL-04, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(2) The Revisional Authority shall not exercise any power if the order is under appeal; or, within a period of six months and beyond a limitation period of three years; or, if the order has already been taken for revision at an earlier stage; or, a revisional order.

The Revisional Authority may pass an order on any point which has not been raised and decided in an appeal, before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years of the impugned order whichever is later.

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of section 112(appellate to Tribunal) or section 117(appeal to High Court) or section 118(appeal to Supreme Court), be final and binding on the parties.

(4) If the impugned order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court/Supreme Court shall be excluded in computing the period of limitation of three years under sub-section (2).

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation of three years under sub-section (2).

### **Second level Appeal before Appellate Tribunal U/s 112:**

(1) Any person aggrieved by an order passed by Appellate Authority or Revisional Authority of CGST/SGST/UTGST may appeal to the Appellate Tribunal against such order within three months from the date on which the impugned order is communicated to the person preferring the appeal.

(2) The Appellate Tribunal, in its discretion, may refuse to admit any such appeal where the disputed amount comprising of tax, input tax credit, fine, fee or penalty does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of SGST/UTGST, may examine the legality or propriety of any order passed by Appellate Authority or Revisional Authority for his satisfaction and by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the impugned order has been passed.

(4) The application under sub-section (3) shall be dealt with by the Appellate Tribunal as an appeal and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) The respondent party may file, within forty-five days of the receipt of notice from Tribunal, a memorandum of cross-objections, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may condone delay in filing appeal u/ss (1)/(5) upto three months/forty-five days respectively, if it is satisfied that there was sufficient cause for delay.

(7) An appeal under sub-section(1), memorandum of cross-objection under sub-section(5) and Department's application under sub-section(3) shall be filed to the Appellate Tribunal in Form APL-05, APL-06 and APL-07 respectively( provisional acknowledgements issued immediately) along with grounds of appeal and other relevant documents. If certified copy of the decision or order appealed against is submitted within seven days of filing the appeal/application, date of final acknowledgement(Form APL-02) shall be the date of filing

appeal/application, otherwise, actual date of submission of such certified copy shall be considered the date of filing appeal/application (Rule 110).

Verification of digital signature certificate in appeal form shall be as per provisions of IT Act, 2000.

(8) **Pre-deposit** to be made by the appellant under sub-section (1) shall be (a) full amount of admitted tax, interest, fine, fee and penalty and (b) a sum equal to twenty per cent of the remaining amount of tax in dispute, arising from the impugned order, subject to a maximum of fifty crore rupees, (one hundred crore in IGST), in addition to the amount paid before filing appeal to the Appellate Authority under section 107(6).

(9) Where the appellant has paid the pre-deposit amount, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) The fees for filing of appeal or restoration of appeal shall be one thousand rupees for every one lakh rupees of disputed amount of tax or input tax credit or the amount of fine, fee or penalty, subject to a maximum of twenty-five thousand rupees.

There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

### **Proceedings in Appellate Tribunal U/s 113:**

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders there on, (summary statement in Form APL-04), as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(2) The Appellate Tribunal may adjourn the hearing of the appeal for reasons to be recorded in writing for not more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may on its own or brought to its notice by concerned parties, amend any order passed by it, so as to rectify any error apparent on the face of the record, within a period of three months from the date of the order, giving an opportunity of being heard to the party adversely affected, if any.

(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or the Revisional Authority, or the original adjudicating authority, as the case may be, the appellant and the jurisdictional Commissioner of CGST/SGST/UTGST.

(6) Save as provided in section 117(appeal to High Court) or section 118(appeal to Supreme Court), orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.

Whether the order of Tribunal is appealed to High Court/Supreme Court or not, amount payable to Govt., if any, as a result of Tribunal order, tax payer has to make the payment. Same provision is applicable in case of High Court judgement.(section 119).

### **Refund of pre-deposit amount:**

U/s 115 of the Act, if pre-deposit amounts made before admission of appeal are required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount (**not the date of order**) till the date of refund of such amount.

### **Judicial status of Appellate Tribunal U/s 111:**

(1) The Appellate Tribunal shall not be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder.

(2) The Appellate Tribunal shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908, while trying a suit in respect of matters, namely, summoning and examining any person on oath, production of documents, evidence on affidavits, requisitioning any public record or documents as per the provisions of the Indian Evidence Act, 1872, other matters specified in this sub-section.

(3) The Appellate Tribunal is empowered to enforce its order like a decree made by a court, sending for execution to the jurisdictional court specified in this sub-section.

(4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

#### **Constitution of Appellate Tribunal U/s 109:**

(1) The Government shall, on the recommendations of the Council, by notification, constitute GST Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or the Revisional Authority.

(2) There shall be two-tier Appellate Tribunal - National Bench/Regional Benches and State Bench/Area Benches.

(3) The National Bench 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) Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

(5) The National Bench or Regional Benches shall have jurisdiction to hear appeals against the orders where one of the disputed issues involved relates to the place of supply.

(6) State Bench and Area Benches shall be constituted with jurisdiction of each State or Union territory or for more than one state or Union territory, if required.

(7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders involving matters other than place of supply.

(8) The President/ the State President shall distribute the business or transfer cases among Regional Benches / Area Benches, as the case may be.

(9) Each State Bench and Area Benches 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) Any appeal may be heard by a Bench of at least two Members: Provided that any appeal where the disputed amount does not exceed five lakh rupees and which does not involve any question of law may be heard by a bench consisting of a single member.

(11) In case of difference in opinion amongst the members on any point or points, it shall be heard by other member of same Bench or other Benches and decided according to the opinion of the majority of members who have heard the case.

#### **Qualifications of President and Members U/s 110:**

1 (a) the President-- has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years; (b) a Judicial Member— (i) has been a Judge of the High Court; or (ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or (iii) is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years; (c) a Technical Member (Centre) - is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A; (d) a Technical Member (State)- is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three

years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

Other terms and conditions of appointment, tenure of service, remuneration, process of suspension and removal from service etc. of the president and members are governed by section 110(2) to 110(17) of the Act. Financial and administrative power of the president is mandated in section 114 of the Act.

#### **Authorized Representative:**

Under section 116(2) of the Act, authorized persons to represent the Assesse before adjudicating authority, Appellate Authority, Revisional Authority or Appellate Tribunal in any proceeding under the Act shall be

— (a) his relative or regular employee; or (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or (c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or (d) a retired officer of the Commercial Tax Department of any State Government or Union territory or of the Board who had worked in a post not below the rank than that of a Group-B Gazetted officer for a period of not less than two years, after a cooling period of one year ; or (e) authorised GST practitioner of the concerned registered person.

#### **Present status of constitution of Appellate Tribunal:**

The Appellate Tribunal and its Benches are yet to be constituted in many States and Union territories under section 109 of the Act, as a result, either Appellate/Revisional Authorities are not passing orders or the appellants are unable to file appeal or application before the Tribunal within the time limit specified.

For the reasons for non-constitution of Tribunal, judgement of Hon'ble Madras High Court dated 29<sup>th</sup> September, 2019, in the case "Revenue Bar Association Vs Union of India" stated below may be referred to:

“(i) Section 110(1)(b)(iii) of the CGST Act which states that a Member of the Indian Legal Services, who has held a post not less than Additional Secretary for three years, can be appointed as a Judicial Member in GSTAT, is **struck down**

(ii) Section 109(3) and 109(9) of the CGST Act, 2017, which prescribes that the tribunal shall consist of one Judicial Member, one Technical Member (Centre) and one Technical Member (State), is **struckdown**.

(iii) We recommend that the Parliament must consider to amend sections 109 & 110 of the CGST Act, 2017 for including lawyers to be eligible to be appointed as Judicial Members to the Appellate Tribunal in view of the issues which are likely to arise for adjudication under the CGST Act and in order to maintain uniformity in various statutes.”

#### **Removal of difficulties:**

In order to remove difficulties in filing appeal/application to Appellate Tribunal in specified time limit, Central Govt. vide CGST (Ninth Removal of Difficulties), Order No. 09/2019, 03<sup>rd</sup> December, 2019, has clarified that:

Three months/six months from the date on which the order sought to be appealed against is communicated, in section 112 (1)/112(3) shall be considered to be the later of the following dates:-

(i) The date of communication of order; or

(ii) The date on which the President or the State President, as the case may be, of the Appellate Tribunal after its constitution under section 109, enters office.

CBIC vide circular No. 132/2/2020, dated 18<sup>th</sup> March, 2020, has further clarified the above position and advised the appellate authorities to dispose all pending appeals expeditiously without waiting for the constitution of the appellate tribunal.

### Writ petition to High Court by-passing the Appellate Tribunal:

Question arises whether in a situation of Appellate Tribunal not being constituted, order passed by appellate authority or revisional authority can be challenged in High Court. In the judgement dated 8<sup>th</sup> June, 2020 of such a recent case, Hon'ble Allahabad High Court in "M/s A. B. Enterprises vs State of UP", has disposed of the petition by providing that the petitioner can invoke the remedy of filing appeal before the Tribunal in terms of the provisions of CGST (Ninth Removal of Difficulties), Order No. 09/2019, 3<sup>rd</sup> December, 2019.

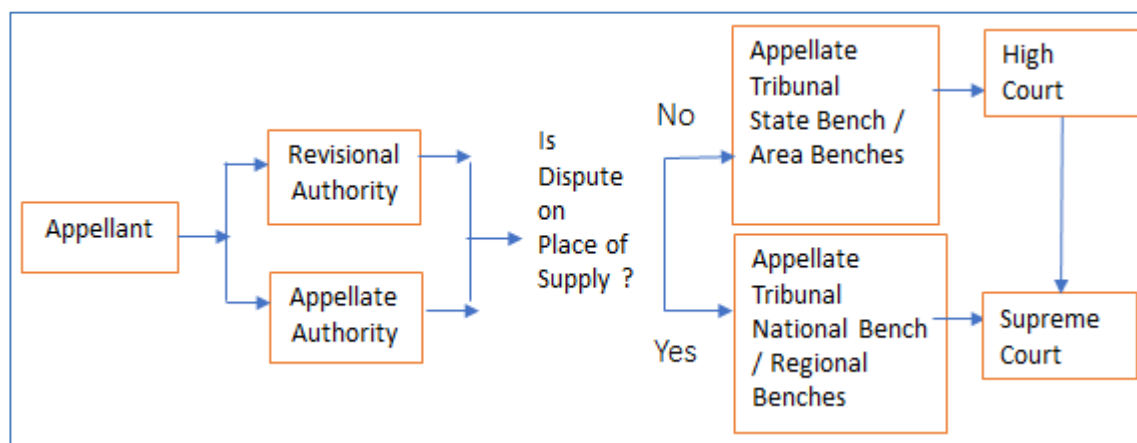
### Third level appeal to the High Court U/s 117:

- (1) Order passed by the State Bench or Area Benches of the Appellate Tribunal may be appealed to the High Court, if the case involves a substantial question of law.
- (2) The appeal shall be filed in Form APL- 08, within a period of one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person. However, the High Court may condone delay with sufficient cause to its satisfaction.
- (3) Only the question formulated on substantial question of law in appeal and substantial question of law aroused during hearing, if any, shall be heard in the High court.
- (4) The High Court shall decide and deliver judgment containing the grounds on decision and may award such cost as it deems fit.
- (5) The High Court may determine any issue which either is not determined or wrongly determined by the State Bench or Area Benches.
- (6) The appeal shall be heard by a Bench of not less than two Judges of the High Court and decided by the opinion of majority.

### Fourth level appeal to the Supreme Court U/s 118:

An appeal shall lie to the Supreme Court— (a) directly from any order passed by the National Bench or Regional Benches of the Appellate Tribunal; or (b) from any judgment or order passed by the High Court, provided the High Court certifies it to be a fit case for appeal to the Supreme Court.

### 4 Tier Appeal / Revision Framework:



### Demand confirmed by the Court under Rule 115:

The jurisdictional officer shall issue a statement in FORM APL-04 clearly indicating the final amount of demand confirmed by the High Court or, as the case may be, the Supreme Court.

### Non-appealable matters U/s 121 of the Act:

A decision or order on the following matters is non-appealable:—

- (a) An order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer, or
- (b) An order pertaining to the seizure or retention of books of account, register and other documents, or
- (c) An order sanctioning prosecution under this Act, or
- (d) An order passed under section 80 for Payment of tax and other amount in instalments.

**Cross empowerment between CGST and SGST/UTGST officers:**

In our dual nature of GST, every transaction of supply attracts CGST and SGST/UTGST, as such, section 6 of the Act provides for cross-empowerment of powers between central and state tax officers. Accordingly, if a proper officer of CGST passes an order with respect to a transaction, he will also act as the proper officer of SGST/UTGST for the same transaction and issue the order with respect to both CGST and SGST/UTGST component of the same transaction. Similar is the case for orders passed by proper officer of SGST/UTGST and they can issue order with respect to CGST and IGST (section 4 of IGST). Most of the provisions of CGST are applicable in IGST (section 20).

The Act also provides that where a proper officer under one Act has passed an order, any appeal/review/revision/rectification against the said order will lie only with the proper officers of that Act only. It implies that if a tax payer is aggrieved by the order for any transaction he need not approach both the authorities of central and state tax.

**Conclusion (personal opinion of author):**

- (1) Limitation period for filing appeal of 3/6 months for tax payer/Department to Appellate Authority/Appellate Tribunal respectively defeats the principle of **Equity**.
- (2) Condonation of delay is restricted to one month and 3 months/45 days by Appellate authority and Appellate Tribunal respectively; instead, it would have been left on their discretion.
- (3) Point of “communication” and “receipt” of order for reckoning of limitation in filing appeal to Appellate Authority/ Appellate Tribunal and High court needs specific clarification, may be the date of uploading of order in common GST portal.
- (4) It is to be noted that pre-deposit of 10%/20% before filing appeal is on disputed amount of tax only, excluding any other payment.
- (5) Once pre-deposit of 10%/20% is made, recovery of balance amount is automatically stayed. Neither any petition/application for stay, nor, any stay order from Appellate Authority/Appellate Tribunal is required.
- (6) Appellate Tribunal would have been empowered to wave 20% of pre-deposit amount in full or part with necessary conditions of financial constraints of appellant and interest of revenue.
- (7) Allowing 3 adjournments only during hearing in appeal by Appellate Authority and Appellate Tribunal attempt to faster delivery of judgement, but one year’s mere advisory period of completing judgement is likely to defeat the purpose.
- (8) Revision within three years (appears to be very long period), on the basis of, amongst others, **upon information received by him**, and if Revisional Authority considers the order to be **erroneous, illegal and improper**, besides being Prejudicial to the interest of revenue, should be applicable to tax payers also. Accordingly, tax payer should have right to apply for revision of any order. This needs specific clarification.
- (9) Tribunal’s discretionary power to refuse admission of appeal of disputed amount up to fifty thousand rupees without considering merit is limiting the right to appeal. Alternatively, frivolous appeal may be checked by empowering the Tribunal to award cost.
- (10) Tribunal’s status is quasi-judicial, drawing power from the Act only and guided by the principle of natural justice, though however, for the facts of the case, its decision is final. Appellate Tribunal, exclusively by a separate comprehensive Act, would have perhaps served better the interest of justice.
- (11) The Act should be amended immediately and the Appellate Tribunal constituted in line with the spirit of the judgement of Hon’ble Madras HC, so that appellants need not wait for long to exercise their right to appeal.
- (12) The Act does not provide any period of limitation for appeal to the Supreme Court.