



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (L) NO.4698 OF 2026

The Hongkong and Shanghai Banking
Corporation Ltd

...Petitioner

Versus

State of Maharashtra through the
Secretary to the Government Revenue
Dept & Ors.

...Respondents

Mr. Prasad Paranjape (Through V.C.) a/w. Bhavya Varma a/w. Mr. Kevin Gogri,
i/b. Lumiere Law Partners, for Petitioner.

Mr. Himanshu Takke, AGP for Respondent- State.

CORAM: G. S. KULKARNI &
AARTI SATHE, JJ.

DATE: 20 FEBRUARY 2026

Oral Judgment: (Per G. S. Kulkarni, J.)

1. This petition under Article 226 of the Constitution raises an interesting issue as to whether the Goods and Services Tax Appellate Tribunal (**‘the Tribunal’**), in its constitution under the Central Goods and Services Tax Act, 2017(**CGST Act**), has jurisdiction to pass interim orders.

2. An Order-in-Original was passed under the provisions of the CGST Act against the petitioner on 18th December 2023 whereunder a tax liability stands confirmed against the petitioner. The Petitioner preferred an Appeal before the Appellate Authority. By an Order dated 12th June 2024, the Appellate Authority rejected the Petitioner’s Appeal by passing an Order-in-Appeal.

3. The Petitioner thereafter filed an Appeal before the GST Tribunal against the said Order-in-Appeal on 5th February 2026. In the interregnum, the Petitioner received intimations by e-mails dated 3rd February 2026 and 6th February 2026 raising a demand. Upon receipt of such intimations, the Petitioner informed Respondent No. 3 that the demand amount has been deposited and adjusted through Form GST DRC-03A, and that an Appeal against the Order-in-Appeal is pending before the Tribunal.

4. It is the petitioner's contention that notwithstanding the above position, a Recovery Notice dated 6th February 2026 has been issued to the Petitioner and steps are sought to be taken to implement the same. It is in these circumstances, the present Petition has been filed contending that although the petitioner's appeal is pending before the Tribunal, coercive recovery proceedings ought not to be continued. The Petition, therefore, seeks the following substantive reliefs:

a) Your Lordships be pleased to issue a Writ of Certiorari any other appropriate writ, order or direction under Article 226/ 227 of the Constitution of India, quashing and setting aside the Impugned Intimation Notice dated 03.02.2026 and the Impugned Recovery Notice dated 06.02.2026 for being arbitrary, without the authority of law, in excess / without jurisdiction, and in contravention of the Section 112(9) and/or Section 75(12) of the CGST Act;

b) Pending hearing and final disposal of this Writ Petition, by an interim order and injunction, stay the operation and effect of the Impugned Intimation Notice dated 03.02.2026 and the Impugned Recovery Notice dated 06.02.2026;

5. At the outset, Mr. Takke, learned counsel appearing for the Revenue, submitted that once the Appeal is pending before the Tribunal, the Petitioner ought to have approached the Tribunal seeking appropriate interim reliefs. He submitted that the Petitioner has an efficacious alternative remedy of moving the

Tribunal for grant of stay, including on the basis of its contention under Section 112(9) of the Central Goods and Services Tax Act, 2017(**CGST Act**), namely, that upon payment of the amount in terms of sub-section (8) of Section 112, recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the Appeal.

6. Responding to the objections as raised on behalf of the Revenue, learned counsel for the Petitioner submitted that there is no provision either under the CGST Act or the Rules framed thereunder empowering the Tribunal to grant an interim order staying recovery proceedings. It was therefore contended that the Petitioner had no efficacious alternative remedy and was constrained to approach this Court under Article 226 of the Constitution of India.

7. In the aforesaid circumstances, the issue which arises for consideration, is whether the Tribunal as constituted under Sections of CGST Act is empowered to pass interim orders. With the assistance of the learned counsel for the parties, perused the relevant statutory provisions. Chapter XVIII of the CGST Act provides for Appeals and Revisions. Section 109 deals with the constitution of the Appellate Tribunal. Section 111 provides for the procedure before the Appellate Tribunal. Section 112 provides for Appeals to the Appellate Tribunal. Section 113 provides for orders of the Appellate Tribunal. The said provisions are required to be noted and read as under:

111. Procedure before Appellate Tribunal.— (1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, 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, the Appellate Tribunal shall have power to regulate its own procedure.

(2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, 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 the following matters, namely:—

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) dismissing a representation for default or deciding it ex parte;
- (g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (h) any other matter which may be prescribed.

(3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

- (a) in the case of an order against a company, the registered office of the company is situated; or
- (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(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.

Section 112. Appeals to Appellate Tribunal.-*

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal; or the date, as may be notified by the Government, on the recommendations of the Council, for filing appeal before the Appellate Tribunal under this Act, whichever is later.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in

tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or Commissioner of Union territory tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed; or the date, as may be notified by the Government, on the recommendations of the Council, for the purpose of filing application before the Appellate Tribunal under this Act, whichever is later, for determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorised officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107 or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal, as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal within three months after the expiry of the period referred to in sub-section (1) or permit the filing of an application within three months after the expiry of the period referred to in sub-section (3), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed.

(8) No appeal shall be filed under sub-section (1), unless the appellant has paid-

(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, in addition to the amount paid under sub-section (6) of section 107, arising from the said order, subject to a maximum of 5 [twenty crore rupees, in relation to which the appeal has been filed.

[Provided that in case of any order demanding penalty without involving demand of any tax, no appeal shall be filed against such order unless a sum equal to ten percent of the said penalty, in addition to the amount payable under the proviso to sub-section (6) of section 107 has been paid by the appellant.]

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal,-

(a) in an appeal for rectification of error or for any other purpose; or
(b) for restoration of an appeal or an application,
shall be accompanied by such fees as may be prescribed.

113. Orders of Appellate Tribunal.— (1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon 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, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State tax or the Commissioner of the Union territory tax or the other party to the appeal within a period of three months from the date of the order:

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given an opportunity of being heard.

(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 or the Commissioner of State tax or the Union territory tax.

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

8. In our opinion, the aforesaid provisions are required to be read conjointly. Sub-section (1) of Section 111 provides that the Appellate Tribunal, while disposing of any proceedings or an Appeal before it, shall 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 the Act and the Rules framed thereunder, shall have the power to regulate its own procedure. Sub-section (2) of Section 111 provides that the Appellate Tribunal shall, for the purpose of discharging its functions under the Act, 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 specified in clauses (a) to (h) therein. Sub-section (3) provides that any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a Court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to transmit its order for execution to the Court within the local limits of whose jurisdiction the subject matter is situated, as contemplated under clauses (a) and (b). Sub-section (4) provides that all proceedings before the Appellate Tribunal shall be deemed to be judicial

proceedings within the meaning of Sections 193 and 228 of CGST Act and for the purposes of Section 196 of the Indian Penal Code, 1860 and that the Appellate Tribunal shall be deemed to be a Civil Court for the said purposes.

9. We now advert to the most relevant provision i.e., Section 113, which deals with the orders to be passed by the Appellate Tribunal. Sub-section (1) of Section 113 provides that the Appellate Tribunal may, after giving the parties to the Appeal an opportunity of being heard, pass such orders thereon *as it thinks fit*, confirming, modifying or annulling the decision or order appealed against, or may refer the case back to the Appellate Authority, the Revisional Authority or the original Adjudicating Authority with such directions as it may think fit for a fresh adjudication or decision, including after taking additional evidence, if necessary. Sub-section (2) of Section 113 provides that the Appellate Tribunal may, if sufficient cause is shown at any stage of the hearing of an Appeal, grant time to the parties and adjourn the hearing of the Appeal for reasons to be recorded in writing.

10. Considering the nature of the powers conferred under sub-section (1) of Section 113 to pass such orders “as it thinks fit”, in our opinion, it cannot be inferred, that although the Tribunal is vested with the jurisdiction to pass substantive final orders on the Appeal to confirm, modify or annul the decision or order appealed against, or may refer the case back to the Appellate Authority or the Revisional Adjudicating Authority with appropriate directions as it may think fit, for a fresh adjudication or decision in the manner as provided in sub-section (1) of Section 113, it would nonetheless lack jurisdiction to pass appropriate interim orders. The power to grant interim relief, including protection against recovery

pending the Appeal, is inherent and incidental to the appellate jurisdiction conferred upon the Tribunal. Thus, the appellate power of the Tribunal being wide in its sweep, necessarily wields with the appellate tribunal, the authority and jurisdiction to pass appropriate interim orders relevant to subject matter of the appeal, so as to make the appellate remedy effective.

11. Also, on first principles, we are unable to accept a proposition that although the Appellate Tribunal is a statutory forum created under the scheme of Sections 111, 112 and 113 of the CGST Act, 2017, it would nevertheless be powerless to grant interim relief. Such an interpretation would render the appellate remedy illusory and defeat the legislative intent, cumulatively and wholesomely gathered from the provisions as noted hereinabove, surrounding the constitution of the Appellate Tribunal.

12. The consequence of what is urged on behalf of the petitioner is to the effect that although the Appellate Tribunal would have powers to set aside the order impugned before it, the interim relief authority would be vested with the High Court in the proceedings under Article 226 of the Constitution. This can never be the legislative intent, that the High Court should function as a forum for grant of interim relief, in matters squarely falling within the appellate jurisdiction of the Tribunal. This is inconceivable.

13. When we have reached the aforesaid conclusion, although not referred at the bar, our anxiety of a deeper scrutiny led us to lay our hands on the Notification dated 24 April 2025 issued by the Ministry of Finance, Department of Revenue notifying the “Goods and Services Tax Appellate Tribunal (Procedure) Rules,

2025”, under which the following Rules would make the position crystal clear, insofar as the powers of the Tribunal in passing interim orders are concerned:

“10. Inherent powers. – Nothing in these rules shall be deemed to limit or otherwise affect the inherent powers of the Appellate Tribunal to make such orders or give such directions as may be necessary for meeting the ends of justice or to prevent abuse of the process of the Appellate Tribunal.

29. Interlocutory applications. – Every interlocutory application for stay, direction, rectification in order, condonation of delay, early hearing, exemption from production of copy of order appealed against or extension of time prayed for in pending matters shall include all the information as per the prescribed GSTAT FORM-01 and the requirements prescribed in that behalf shall be complied with by the applicant, besides filing an affidavit supporting the application.”

49. Procedure for filing of and disposal of interlocutory application. — The provisions of the rules regarding the filing of interlocutory applications shall, in so far as may be, apply mutatis mutandis to the filing of applications under this rule.

59. Registers to be maintained. —The following Registers shall be maintained online/offline and posted on a day-to-day basis by such ministerial officer or officer of the Registry may, subject to any order of the President –

...

(c) register of interlocutory applications (GSTAT-CDR -05).

(emphasis supplied)

14. In a context quite similar in **Income Tax Officer, Cannanore vs. M. K. Mohammed Kunhi**¹, the Supreme Court was dealing with the question, as to whether the Income Tax Appellate Tribunal had the power, under the provisions of the Income Tax Act, 1961 to stay the recovery of the realization of the penalty imposed by the departmental authorities on an assessee during the pendency of an appeal filed before it. In such context, the Supreme Court, interpreting Section 254 of the Income Tax Act being a provision quite similar to Section 113 of the CGST Act, held that although there was no express provision conferring upon the Appellate Tribunal the power to stay recovery of tax or penalty during the pendency of an appeal, such power must be regarded as incidental and necessary to

¹ 1968 SCC OnLine SC 71

its appellate jurisdiction. The Supreme Court held that when Section 254(1) confers wide appellate powers upon the Tribunal to pass such orders “as it thinks fit,” it impliedly grants all powers necessary to make the exercise of such appellate jurisdiction effective. The relevant observations of the court read thus:

“6. There can be no manner of doubt that by the provisions of the Act or the Income Tax Appellate Tribunal Rules, 1963 powers have not been expressly conferred upon the Appellate Tribunal to stay proceedings relating to the recovery of penalty or tax due from an assessee. At the same time it is significant that under Section 220(6) the power of stay by treating the assessee as not being in default during the pendency of an appeal has been given to the Income Tax Officer only when an appeal has been presented under Section 246 which will be to the Appellate Assistant Commissioner and not to the Appellate Tribunal. There is no provision in Section 220 under which the Income Tax Officer or any of his superior departmental officers can be moved for granting stay in the recovery of penalty or tax. It may be that under Section 225 notwithstanding that a certificate has been issued to the Tax Recovery Officer for the recovery of any tax (the position will be the same with regard to penalty) the Income Tax Officer may grant time for the payment of the tax. In this manner he can probably keep on granting extensions until the disposal of the appeal by the Tribunal. It may also be that as a matter of practice prevailing in the department the Commissioner or the Inspecting Assistant Commissioner in exercise of administrative powers can give the necessary relief of staying recovery to the assessee but that can hardly be put at par with a statutory power as is contained in Section 220(6) which is confined only to the stage of pendency of an appeal before the Appellate Assistant Commissioner. The argument advanced on behalf of the appellant before us that in the absence of any express provisions in Sections 254 and 255 of the Act relating to stay of recovery during the pendency of an appeal it must be held that no such power can be exercised by the Tribunal, suffers from a fundamental infirmity inasmuch as it assumes and proceeds on the premise that the statute confers such a power on the Income Tax Officer who can give the necessary relief to an assessee. **The right of appeal is a substantive right and the questions of fact and law are at large and are open to review by the Appellate Tribunal. Indeed the Tribunal has been given very wide powers under Section 254(1) for it may pass such orders as it thinks fit after giving full hearing to both the parties to the appeal. If the Income Tax Officer and the Appellate Assistant Commissioner have made assessments or imposed penalties raising very large demands and if the Appellate Tribunal is entirely helpless in the matter of stay of recovery the entire purpose of the appeal can be defeated if ultimately the orders of the departmental authorities are set aside. It is difficult to conceive that the legislature should have left the entire matter to the administrative authorities to make such orders as they choose to pass in exercise of unfettered discretion.** The assessee, as has been pointed out before, has no right to even move an application when an appeal is pending before the Appellate Tribunal under Section 220(6) and it is only at the earlier stage of appeal before the Appellate Assistant Commissioner that the statute provides for such a matter being dealt with by the Income Tax Officer. **It is a firmly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (Sutherland Statutory Construction, 3rd Edn., Articles 5401 and 5402). The powers which have been**

conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. In Domat's Civil Law Cushing's Edn., Vol. 1 at p. 88, it has been stated:

"It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions, but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it."

(emphasis supplied)

15. In the light of the aforesaid discussion and considering the powers conferred upon the Tribunal under the statutory scheme, we are not inclined to accept the Petitioner's contention that the Tribunal lacks jurisdiction to grant interim reliefs of the nature sought. Consequently, we are of the opinion that the Petitioner ought to move an appropriate interim application before the Appellate Tribunal and invite appropriate orders in the pending Appeal.

16. Considering that the Petitioner has approached this Court urgently in view of the Recovery Notice dated 6th February 2026, we deem it appropriate and in the interests of justice, to grant limited interim protection to the petitioner, so as to enable the Petitioner to approach the Appellate Tribunal. Accordingly, the Petitioner is at liberty to file an interim application before the Appellate Tribunal within a period of two weeks from today. Till such interim application is filed and decided by the Tribunal, the Recovery Notice dated 6th February 2026 shall not be acted upon by the Respondents.

17. At this stage, we are informed that the electronic portal does not provide for filing of an interim application. If that be so, we permit the Petitioner to file the interim application manually. We also direct that the Registry of the Tribunal

makes an appropriate provision on the portal to enable filing of such interim applications.

18. It is clarified that the limited protection granted herein is confined merely to enable the Petitioner to approach the Tribunal, and is in no manner, an expression on the merits of the rival contentions. All contentions of the parties in the Appeal proceedings are expressly kept open for consideration by the Tribunal.

19. The Petition is disposed of in the aforesaid terms. No order as to costs.

(AARTI SATHE, J.)

(G. S. KULKARNI, J.)