

CESTAT to HIGH COURT – The forlorn road.

(S. Jaikumar and G. Natarajan, Advocates, Swamy Associates)

“CESTAT”, the final fact finding appellate body under the Customs Act and Central Excise Act, is held in high esteem by all those associated with the levy of Customs, Excise and Service Tax. Over the years, the CESTAT has gained lot of confidence among the assessee community. Being revenue officers themselves, the quasi judicial functionaries of the Revenue Department, often fail to administer justice in the true sense of the term and they merrily, err on the revenue side. CESTAT is the place where justice is administered, in the true sense. As far as the question of facts are concerned, CESTAT is the ultimate authority and no further appeal lies against the findings of fact recorded by the CESTAT. The orders passed by the CESTAT are appellable to the High Court and Supreme Court (issues involving valuation and rate of duty). The enormous number of judgments rendered by various benches of the CESTAT would vouch for the meticulous approach of the CESTAT on this specialized branch of litigation.

CESTAT is manned by Judicial Members (who are drawn from the Bar / subordinate judiciary) and Technical Members (who have served the revenue department in various higher capacities). This composition of the CESTAT benches, ensures judicious approach to the issues coupled with technical caliber. The selection process of these members is rigorous, to say the least and they are interviewed by a Committee comprising of

- (a) A Judge of the Supreme Court to be nominated by the Chief Justice of the SC;
- (b) Law Secretary;
- (c) Revenue Secretary; and
- (d) The President of the CESTAT.

Revenue officers having the requisite experience and opting to become Technical Members of the CESTAT, would normally have only few years of service left for them in the CESTAT, as they opt to join CESTAT only during their penultimate period of service, unlike the case of Judicial Members of the CESTAT, who join CESTAT, comparatively at an early age. Though the CESTAT is held in high esteem in its circles, practicing advocates rarely opt to join as Judicial Members of the CESTAT and the ever existing vacancies in the post of Judicial Members of CESTAT is testimony to this fact. Though the post of Member in CESTAT commands a very great degree of authority involving huge stake of demands, the service conditions of the Members of the CESTAT, leaves much to be desired.

It is quite natural that the Judicial Members of the CESTAT, shall also have job satisfaction, promotional avenues and better career prospect, as any disgruntlement in this regard would jeopardize the cause of justice. The natural and logical expectation of any Judicial Member of the CESTAT would be to become a Judge of the High Court. Let us analyse the rationale of such expectation and the present scenario.

As per article 217 (2) of the Constitution, any citizen of India, who has held any judicial office for at least ten years or has been an advocate of the High Court for at least ten years, are eligible to be considered for appointment as a High Court Judge. Holding a post of Member of any specialized Tribunal is also recognized for this purpose, as per the Explanations appended to the said article. The article also provides for computing the period of practicing as an advocate and the period of holding the post of Member of any Tribunal, together, to reckon the above said entitlement. Going by the criteria, the Judicial Members of the CESTAT are very much entitled to be considered for appointment as High Court Judges.

To quote from the 162nd Report of the Law Commission of India, as in most of the matters decided by CESTAT, the appeal lies only to the Supreme Court, it would not be unreasonable to infer that this Tribunal has been treated by the Parliament, almost on par with the High Court (Para 5.1 of the report). After observing so, the Law Commission went on to make several recommendations, which *inter alia* include that the Judicial Members of the CESTAT shall be considered for appointment as High Court Judges against the quota meant for subordinate judiciary. The law Commission also felt that this will have the advantage of competent personnel, having knowledge in tax matters, being appointed as High Court Judges.

The importance of implementing the reports of the Law Commission has been urged, by the Parliamentary Standing Committee on Law and Justice, in its 15th report presented on 22nd May 2006. To quote from the report, the Committee has observed,

The Committee feels that the Law Commission's reports form the basis for review of the judicial system and framing, amending and repealing the legislations as per the needs of the changing circumstances. Thus, the role of the Commission assumes special significance in the Indian judicial and legislative system. The Committee, therefore, recommends that the reports of the Commission should be implemented in letter and spirit and the Ministry should make concerted efforts to ensure timely implementation of the recommendations contained therein. The Committee also recommends that the Ministry should consider providing statutory backing to the Law Commission on the pattern of other countries like U.K. and Canada, etc., so that it could function more effectively with the desired empowerment.

The need for having specialized tax benches in the High Courts, to be manned by persons having sound knowledge on tax laws, can hardly be under estimated. The Parliamentary Standing Committee on Law and Justice, in its 11th report has also felt "that Judges who have specialized knowledge in tax related matters will be better equipped to decide tax cases. Therefore, the Committee feels that providing for additional Benches in High Courts which would be manned by Judges specializing in tax matters would rectify the current problem of divergent decisions given by High Courts on identical questions of law. Such Benches may deal exclusively with tax cases. The Committee also feels that the existing vacancies of High Court Judges is another reason for pendency of tax cases. Therefore, the Committee is of the opinion that filling up of these vacancies will ensure quicker disposal of tax cases". Judicial

Members of the CESTAT, who have practical experience on the nuances of tax matters can really perform well on such tax benches.

To top it all, the Conference of the Chief Justices of High Courts of India, presided over by the Chief Justice of India, held in September 2002 has also resolved that the Judicial Members of the CEGAT may also be considered for appointment as High Court Judges, while passing the following resolution:

“Resolved that the Judicial Members of the Customs, Excise, Gold (Control) Appellate Tribunal may also be considered for appointment as High Court Judges and reckoned from service quota”.

Though, the Constitutional provisions, view of the Law Commission, the collective will of the Parliament and the collective will of the Judiciary were all in favour of Judicial members of the CESTAT for being considered for appointment as High Court Judges, the crude fact remains that as far as we could gather information, so far, only very few Judicial Members of the CESTAT have seen their way to the corridors of the Hon’ble High Court.

A study has revealed the following, though the possibility of few more instances is not ruled out.

Ms. Justice S.V. Maruti.

AP High Court Bar – Indian Legal Service – Judicial Member of **CEGAT** – Judge AP High Court.

Mr. Justice T.N.C. Rangarajan.

Madras High Court Bar – Judicial Member and later Vice President of **ITAT** – Judge Madras High Court.

Mr. Justice K.A. Thanikachalam.

Madras High Court Bar – Judicial Member **ITAT** – Judge and later Chief Justice of Madras High Court.

Mr. Justice S. Rangarajan

Madras High Court Bar – Judicial Member and later Vice President and then President of **ITAT** – Judge of Delhi High Court – Judge Supreme Court.

Mr. Justice Sethuraman

Madras High Court Bar – Judicial Member and later Vice President **ITAT** – Judge Madras High Court.

Considering the total number of “Service Quota Judges” becoming High Court Judges in various High Courts, it may be concluded that the Judicial Members of CESTAT have not got their due share of recognition, in the matter of appointment of High Court Judges. It is not known, as to whether their names are at least being considered by the collegium for selection of High Court Judges, or this important segment of Judiciary is completely ignored, in this important process. If more Judicial Members of CESTAT become Judges of the High Court, the High Court will see more fastidious disposal of tax cases. It will also be glowing tribute to this mammoth body.

Before parting...

Judges of the High Court (serving or retired) are appointed as President of the CESTAT. If a High Court Judge, who has also served as a Judicial Member of the CESTAT is thus posted as the President of CESTAT, would it not be a perfect blend of specialization and High Court standard, at the helm?