

**(2016) 02 KL CK 0078**

**High Court Of Kerala**

**Case No:** W.A. No. 1960 of 2015 in WP(C) 23197/2015

K.M. Mohammed Shafi and  
Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision:** Feb. 12, 2016

**Acts Referred:**

- Administration of Evacuee Property (Central) Act, 1950 - Section 24
- Constitution of India, 1950 - Article 132(1), Article 134, Article 134A
- Criminal Procedure Code, 1973 (CrPC) - Section 397, Section 401, Section 468, Section 469, Sect

**Hon'ble Judges:** Ashok Bhushan, C.J. and A.M. Shaffique, J.

**Bench:** Division Bench

**Advocate:** Joshi N. Thomas, Advocate, for the Appellant; Jaishankar V. Nair, CGC and N. Nagaresh, Assistant Solicitor General, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

Ashok Bhushan, C.J.

1. The petitioners have filed this writ appeal against judgment dated 13.8.2015 in W.P.(C) No. 23197 of 2015 by which judgment, the writ petition has been dismissed.

2. The brief facts of the case as emerged from the pleadings of the parties are: On 1.6.2007 petitioners 1 and 2 who are travelling in a bus from Bangalore to Mangalore were arrested by Upilangadi Police Station, Mangalore and an amount of Rs. 39,22,679.50 was seized. The Assistant Director, Directorate of Enforcement (FEMA) initiated an investigation for contravention of provisions of the Foreign Exchange Management Act, 1999 (hereinafter referred to as, 1999 Act). For the purposes of investigation under 1999 Act, Assistant Director, the 4th respondent, made an application before the Additional Civil Judge (Junior Division) and Judicial First Class Magistrate Court, Puthur for a direction to the police to handover the

seized property. The Additional Civil Judge passed an order allowing the application, but put certain conditions. The 4th respondent had filed CrI. Revision No. 119 of 2007 in the Court of District and Sessions Judge, Mangalore for removal of three conditions. The Principal Sessions Judge by order dated 1.8.2007 allowed the revision and removed the conditions. The Sessions Court directed the police to handover the seized Indian currencies and other properties to the 4th respondent. The 4th respondent Assistant Director, after completing the investigation, filed a complaint under Section 16(3) of 1999 Act before the Deputy Director (Adjudicating Authority), Directorate of Enforcement, Bangalore. The Adjudicating Authority issued show cause notice dated 20.12.2007 to the petitioners requiring to show cause as to why adjudication proceedings as contemplated under Section 13 of THE 1999 Act could not be held against them. Reply to the show cause notice was given by the petitioners. The Adjudicating Authority, the Assistant Director, heard the petitioners and passed an order on 03.07.2013 by which, the penalty of Rs. 5,25,000/- was imposed on 3rd petitioner and penalty of Rs. 1 lakh each was imposed on petitioners 1 and 2 for violation of Section 3(c) of the 1999 Act. The Adjudicating Authority, however, decided not to confiscate Indian currency and directed for return of balance amount to the 3rd petitioner. The Assistant Director, Directorate of Enforcement filed an appeal under Section 17(2) of 1999 Act against the adjudication order dated 3.7.2013. There was a delay of 28 days in filing the appeal. In the application for condonation of delay it was stated that the delay was caused due to time taken in constituting a review committee. In the appeal the appellant, made an application for staying the order of the Adjudicating Authority pleading that the Adjudicating Authority having held that all the ingredients of Section 3(c) are satisfied had failed to confiscate the amount involved in the contravention.

3. The 3rd petitioner filed W.P.(C) No. 26809 of 2014 praying for a direction to the Assistant Director to release the balance amount. This Court vide its order dated 12th February, 2015 disposed of the writ petition directing the appellate Authority i.e. the Special Director (Appeals), to dispose of the statutory appeal within a period of two months. The 3rd petitioner filed an affidavit in the appeal stating that no appeals were filed so far against the adjudication order. It was also stated in the affidavit that the Assistant Director, Directorate of Enforcement may be directed to furnish list of adjudication orders where instead of confiscation seized Indian currency were released after imposing penalties and a further objection was filed dated 15th May, 2015 by the petitioners stating that the Assistant Director, Directorate of Enforcement is not a person aggrieved and has no authority to file the appeal. There is no authorisation in favour of the Assistant Director to file an appeal. The Special Director (Appeals), Chennai decided the appeal vide its order dated 3.6.2015. The Appellate Authority allowed the appeal confirming the penalty imposed on the petitioners and further confiscated the seized amount of Rs. 39,22,769/-. A review petition was filed by the petitioners before the Special Director

(Appeals) praying for reviewing the order dated 3.6.2015.

4. W.P.(C) No. 23197 of 2015 was filed by the petitioners praying to quash the order dated 3.6.2015 Ext. P7 and it was further prayed that the Appellate Authority may be directed to decide Ext. P8 review petition. The writ petition was heard by learned Single Judge. The learned Single Judge noticed that against the order passed by the Appellate Authority, an appeal is provided under Section 18 of 1999 Act to the Appellate Tribunal. The writ petitioners had challenged the order of the Appellate Authority on the ground of want of jurisdiction and denial of natural justice, hence, the learned Single Judge proceeded to consider the submission. The learned Single Judge held that appeal filed by Assistant Director was maintainable. The argument of violation of natural justice was rejected and the learned Single Judge dismissed the writ petition. Aggrieved by the order of the learned Single Judge, this writ appeal has been filed by the writ petitioners.

5. Sri. Joshi N. Thomas, learned counsel for the appellants in support of the writ appeal contends that the appeal filed before the Special Director (Appeals) i.e. the 5th respondent by the Assistant Director, Directorate of Enforcement, the 4th respondent, was not maintainable. He contends that the Assistant Director is the Adjudicating Authority who has passed the penalty order. The Assistant Director has no authority to file an appeal before the Special Director. The Assistant Director, Directorate of Enforcement cannot be held to be an "aggrieved person" so as to enable him to file the appeal. There is no authorisation by the Central Government in favour of the Assistant Director to file an appeal against the penalty order passed by the Adjudicating Authority. He submitted that the Adjudicating Authority i.e. the Assistant Director can never be said to be aggrieved from an adjudication order and no appeal can be filed before the Special Director. Learned counsel for the appellants re-iterated his submission of violation of principles of natural justice.

6. This Court while admitting the appeal directed the Assistant Solicitor General of India to file a statement. A statement dated 26.10.2015 was filed on behalf of the Central Government. A counter affidavit on behalf of respondents 1 to 5 dated 5.1.2016 has also been filed duly signed by Deputy Director, Directorate of Enforcement, Bangalore.

7. Sri. Daishankar V. Nair, Central Government standing counsel refuting the submission of learned counsel for the appellants contends that Assistant Director, Directorate of Enforcement was fully competent to file an appeal against the order of the Assistant Director. It is submitted that although Assistant Director has also been notified as the Adjudicating authority, but the Assistant Director is also empowered to carry on investigation and file complaint. In the present case, Assistant Director, who adjudicated the matter, did not file the appeal. Rather the appeal was filed by another Assistant Director. The Assistant Director thus, had two different capacity i.e. as Investigating Officer, as complainant as well as the Adjudicating Authority. The complaint having been partially rejected, Assistant

Director who was the complainant is the aggrieved person to file an appeal. It is contended that this appeal cannot be said to be incompetent and the Special Director has rightly decided the appeal on merits. It is further submitted that against the order of the Special Director, the petitioners had the remedy of filing an appeal before the Appellate Tribunal which Appellate Tribunal can consider all submissions on merits.

8. Learned counsel for the appellants in support of his submission has placed reliance on the judgment of the Madras High Court in Director of Enforcement, Madras v. Rama Arangannal and another [, AIR 1981 Madras 80], ADI Pherooshah Gandhi v. H.M. Seervai, Advocate General of Maharashtra, Bombay [, (1970) 2 SCC 484] and Mohtesham Mohd. Ismail v. Spl. Director, Enforcement Directorate and Another (, [2007] 8 SCC 254).

9. We have considered the submissions of learned counsel for the parties and perused the records.

10. From the submissions of learned counsel for the parties and pleadings on record, the following issues arise for consideration in this appeal:

(i) Whether the 4th respondent, Assistant Director, Directorate of Enforcement can be said to be an "aggrieved person" from the order dated 3.7.2013 of the Adjudicating Authority, the Assistant Director, Directorate of Enforcement so as to file an appeal under Section 17(2) of 1999 Act.

(ii) Whether the appeal was decided in violation of the principles of natural justice?

11. The issue to be considered in this Writ Appeal is whether the appeal filed by the Assistant Director, Directorate of Enforcement, 4th respondent before the Special Director against the order dated 03.07.2013 by the Adjudicating Authority, i.e., Assistant Director, was maintainable?

12. An appeal is a creature of a statute. Whether against an order passed in exercise of statutory jurisdiction appeal lies, who is competent to file an appeal, etc., are the questions, the answers of which have to be found out from the statutory scheme of a particular legislation.

13. The Apex Court in Northern Plastics Ltd. v. Hindustan Photo Films Mfg. Co. Ltd. (, 1997 [91] E.L.T. 502) has laid down the following in paragraph 8:

"8. At the outset it must be kept in view that appeal is a creature of statute. The right to appeal has to be exercised by persons permitted by the statute to prefer appeals subject to the conditions regarding the filing of such appeals..."

Thus it is necessary to look into the scheme of the Statute namely, the Foreign Exchange Management Act, 1999 (for short, "the 1999 Act"). The 1999 Act was enacted to consolidate and amend the law relating to foreign exchange. Chapter IV of the Act deals with "contravention and penalties". Section 13 deals with penalties.

Section 13(1) provides that if any person contravenes any provision of this Act, or contravenes any rule, regulation, notification, direction or order issued in exercise of the powers under the Act, he shall, upon adjudication, will be liable to pay penalty. According to Section 13(2), an adjudicating authority adjudging any contravention under sub-section (1), may, if he thinks fit in addition to any penalty which he may impose for such contravention direct that any currency, security or any other money or property in respect of which the contravention has taken place shall be confiscated to the Central Government. Section 14 deals with "enforcement of the orders of Adjudicating Authority. Chapter V deals with adjudication and appeal. Section 16(1) provides that the Central Government may by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think as the Adjudicating Authorities for holding enquiry with regard to alleged contravention committed under Section 13 with regard to whom a complaint has been made under Section 16(3). Section 16(3) requires that no Adjudicating Authority shall hold an enquiry under Section 16(1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government. Section 16(1) to (3) which are relevant are quoted below:

"16. Appointment of Adjudicating Authority.-(1) For the purpose of adjudication under section 13, the Central Government may, by an order published in the Official Gazette, appoint as many officers of the Central Government as it may think fit, as the Adjudicating Authorities for holding an inquiry in the manner prescribed after giving the person alleged to have committed contravention under section 13, against whom a complaint has been made under sub-section (3) (hereinafter in this section referred to the said person) a reasonable opportunity of being heard for the purpose of imposing any penalty:

Provided that where the Adjudicating Authority is of opinion that the said person is likely to abscond or is likely to evade in any manner, the payment of penalty, if levied, it may direct the said person to furnish a bond or guarantee for such amount an subject to such conditions as it may deem fit.

(2) The Central Government shall, while appointing the Adjudicating Authorities under sub-section (1), also specify in the order published in the Official Gazette, their respective jurisdictions.

(3) No Adjudicating Authority shall hold an enquiry under sub-section (1) except upon a complaint in writing made by any officer authorised by a general or special order by the Central Government.

Section 17 contains a provision for appeal to Special Director. The Central Government under Section 17(1) is required to appoint one or more Special Directors (Appeals) to hear appeal against the orders of the Adjudicating Authorities. Section 17(2) provides that any person aggrieved by an order made by the Adjudicating Authority being an Assistant Director of Enforcement or a Deputy

Director of Enforcement, may prefer an appeal to the Special Director (Appeals). Section 17(1) and (2) is quoted below:

"17. Appeal to Special Director (Appeals):- (1) The Central Government shall, by notification, appoint one or more Special Directors (Appeals) to hear appeals against the orders of the Adjudicating Authorities under this section and shall also specify in the said notification the matter and places in relation to which the Special Director (Appeals) may exercise jurisdiction.

(2) Any person aggrieved by an order made by the Adjudicating Authority, being an Assistant Director or Enforcement or a Deputy Director of Enforcement, may prefer an appeal to the Special Director (Appeals)."

Section 18 deals with establishment of Appellate Tribunal by the Central Government to hear the appeals against the order of the Adjudicating Authorities and the Special Director (Appeals). Section 19 provides for appeal to Appellate Tribunal. According to Section 19(1) any person aggrieved by an order made by the Adjudicating Authority other than those referred to in Section 17(1) or the Special Director (Appeals) may prefer an appeal to the Appellate Tribunal. Section 19(1) which is relevant is quoted as below:

"19. Appeal to Appellate Tribunal: (1) Save as provided in sub-section (2), the Central Government or any person aggrieved by an order made by an Adjudicating Authority, other than those referred to in sub-section (1) of section 17, or the Special Director (Appeals), may prefer an appeal to the Appellate Tribunal:

Provided that any person appealing against the order of the Adjudicating Authority or the Special Director (Appeals) levying any penalty, shall while filing the appeal, deposit the amount of such penalty with such authority as may be notified by the Central Government:

Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realisation of penalty.

Section 35 provides an appeal to the High Court. Section 35 provides as follows:

"35. Appeal to High Court: Any person aggrieved by any decision or order of the Appellate Tribunal may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law arising out of such order:

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

Explanation.-In this section "High Court" means-

(a) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(b) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain.

Chapter VI deals with Directorate of Enforcement. Section 36(1) provides as follows:

"36. Directorate of Enforcement: (1) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act.

14. The statutory provision as noted above indicate that the Adjudicating Authority which is appointed by the Central Government shall conduct an enquiry on alleged contravention under Section 13 of the 1999 Act on a complaint in writing made by an Officer or Special Officer or Central Government. Against the order of the Adjudicating Authorities, deciding such complaint, i.e., Assistant Director or Deputy Director of Enforcement an appeal is provided under Section 17(2) by "any person aggrieved by an order...." Further against an order passed by the Adjudicating Authority other than the Assistant Director or Deputy Director of Enforcement, an appeal is provided directly to the Appellate Tribunal by virtue of Section 19(1) by "the Central Government or any person aggrieved by an order". Another provision of appeal is Section 35 where against a decision of the Appellate Tribunal, an appeal can be filed in the High Court by "any person aggrieved". Present is a case of appeal filed before the Special Director under Section 17(2) which appeal is permissible by "any person aggrieved". What is the scope and content of the expression "person aggrieved" under Section 17(2) is the issue before us.

15. The phrase "person aggrieved" is being used in different Statutes and there has been decisions of different Courts explaining and elaborating the concept of "person aggrieved". We being concerned in this case with the expression "person aggrieved" in the context of right of appeal, we shall refer to certain definitions and judgments of different courts.

16. One of the earliest definitions of the phrase "person aggrieved" which has been repeatedly quoted by different High Courts and the Apex Court is the definition given by Dames L.J. in *Ex p Sidebotham, re sidebotham* (1880) 14 Ch D 458 : (1874-80) All England Report Rep 588. Dames L.J. Stated the following:

"...It is said that any person aggrieved by any order of the Court is entitled to appeal. But the words "person aggrieved" do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A "person aggrieved" must be a man who has suffered a legal grievance, a man

against whom a decision has been pronounced which has wrongfully deprived him of something."

Bramwell L.J. in the above judgment expressed himself in the following manner:

"...the general rule is that an appeal must be by the party who has endeavoured to maintain the contrary of that which has taken place. It is not so much that there is a disability on the part of the bankrupt to appeal, as that no one but the Comptroller is entitled to appeal."

The passages extracted above from the judgment of Dames L.J. was considered by the Court of Appeal in *Ex p Official Receiver, re Reed Bowen & Co.* (1887) 19 QBD 174) by Lord Esher MR. Lord Esher MR made the following observations with regard to the above passage:

"This is not an exhaustive definition, but it is an affirmative definition of a person who may appeal, and at all events includes a person who has asked for a decision for which he had a right to ask, and has been wrongfully refused.

Lord Esher MR further stated:

"The meaning of the term "person aggrieved" was explained by this Court in "*EX PARTE OFFICIAL RECEIVER, REED IN RE*", (1887) 19 QBD 174. It was there determined that any person who makes an application to a Court for a decision, or any person who is brought before a Court to submit to a decision, is, if the decision goes against him thereby a "person aggrieved" by that decision".

Lord Justice Kay in the same judgment made the following observations:

"The preliminary objection to the appeal is two-fold: (1) It is said that the Board of Trade are not "persons aggrieved" They are persons whom the court was bound to hear, if they wished to be heard, on the validity of this objection, and the decision has been against them. How it can be said that they are not "persons aggrieved", by the decision, passes my understanding. When two persons are in the position of litigants before the High Court, and the decision of the court goes against one of them, how it can be said that he is not a "person aggrieved" by the decision. I cannot understand. I am clearly of opinion that the Board were "persons aggrieved" by this decision. Then (2) it is said that the decision is not an "order". When the High Court makes a declaration of right, and further orders the costs of the application to be paid (which is the common form here used), and that is drawn up and sealed with the seal of the Court, and, I suppose placed on record, as all orders of the High Court are, it seems to me that it is clearly an order of the Court."

The above Statement of Lord Escher MR was quoted with approval by the Apex Court in *Ebrahim Aboobakar v. Custodian General* (, AIR 1952 SC 319). The phrase "person aggrieved" came up for consideration in the context of Section 24 of the Administration of Evacuee Property Act, 1950. One Abookaker Abdhl Rahiman had



considerable immovable property in Bombay. Soon after partition he went to Pakistan and was in Karachi in the month of September, 1947. One Tek Chand Dolwani supplied information to the Additional Custodian of Evacuee Property who supported the proceedings against Aboobakar under the Bombay Evacuees Property Act, 1949. The Additional Custodian after adjudication held that the said Aboobakar was not an evacuee. However, he issued a notice on the same day asking him to show why he should not be declared an intending evacuee. Tek Chand Dolwani filed an appeal being an informant and interested in the adjudication before the Custodian General of India praying for a declaration that Aboobakar was an evacuee. In the appeal, a submission was raised that Tek Chand Dolwani was not a "person aggrieved" by the order passed by the Custodian and hence he has no locus standi to file the appeal under Section 24 of the 1949 Act.

17. Section 24 has been quoted in paragraph 14 of the judgment as follows:

"The tribunal constituted to hear appeals under section 24 has been constituted in these terms:

"Any person aggrieved by an order made under section 7, section 16, section 19 or section 38 may prefer an appeal in such manner and within such time as may be prescribed:

(a) to the Custodian, where the original order has been passed by a Deputy or Assistant Custodian;

(b) to the Custodian-General, where the original order has been passed by the Custodian, an Additional Custodian or an Authorized Deputy Custodian."

After elaborately discussing the question as to whether Tek Chand Dolwani is a person aggrieved, the following was stated by the Apex Court in paragraph 15:

"15. ....When a person is given a right to raise a contest in a certain matter and his contention is negatived, then to say that he is not a person aggrieved by the order does not seem to us to be at all right or proper. He is certainly aggrieved by the order disallowing his contention. Section 24 allows a right of appeal to any person aggrieved by an order made under section 7. The conclusion reached by the Additional Custodian on the 8th February 1950, that Aboobakar was not an evacuee amounted to an order under section 7 and Tekchand therefore was a person aggrieved by that order....."

The Apex Court in the above case held that Tek Chand Dolwani was a person aggrieved.

18. A Division Bench of the Patna High Court in *Md. Sharfuddin v. R.P. Singh* (, AIR 1957 Patna 235) had occasion to consider the phrase "person aggrieved" in the context of Administration of Evacuee Property Act, 1950. A proceeding was initiated under the aforesaid Act against one Sharafudin by the Assistant Custodian of

Giridih. The petitioner appeared and after certain proceeding, the properties were released by order dated 26.04.1954 in favour of the petitioner. The Assistant Custodian Headquarters, Patna filed an appeal before the Custodian against the order of the Assistant Custodian dated 26.04.1954. Objection was raised by the petitioner that the Assistant Custodian could not be considered as a person aggrieved within the meaning of Section 24(1), hence the appeal was not maintainable. In paragraphs 14 and 15, the following was stated:

"14. Section 24(1)(a) of the Act is in the following terms:

"24(1) Any person aggrieved by an order made under S. 7, S. 16 or S. 40 may prefer an appeal in such manner and within such time as may be prescribed:

(a) to the Custodian, where the original order has been passed by a Deputy or Assistant Custodian.

15. The argument put forward by Mr. Ayub in support of his above contention is that Mr. P. Sinha, Assistant Custodian, Headquarters, Patna, opposite party No. 2, was not a private party, but a departmental head, and, as such, he had no locus standi to come up in appeal under S. 24(1)(a) of the Act. In that, he cannot be considered to be a "person aggrieved" within the meaning of sub-s. (1) of S. 24 of the Act. In support of his contention, he has relied on a Single Judge decision of the East Punjab High Court in Messrs. Thakar Das Pyare Lal v. Custodian, Evacuees Property, East Punjab, Julundur, AIR 1950 EP 175 (A), in which in considering S. 30 of the East Punjab Evacuees Property (Administration) Ordinance, which is equivalent to S. 24 of the Act, it was held that no one has a right to appeal under S. 30 of the Ordinance unless he can show that a decision has been pronounced against him, which has wrongfully deprived him of something, or wrongfully affected his title to something. In other words, the words "aggrieved person" in S. 30 of the Ordinance do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. In my opinion, this decision has no application to the present case, because in that case the appeal was not by the person in charge of the Custodian Department as is in the present case. In the Punjab case, an allotment made in favour of a person by the Provincial Government had been cancelled by the Custodian under S. 10 of the Ordinance, and, therefore, it was held that it could not be said that such a person had been wrongfully deprived of anything to which he was legally entitled, and, as such, he had no locus standi to go up in appeal."

19. One of the judgments on which reliance has been placed by the learned counsel for the appellant is the judgment of the Apex Court in *Adi Pherozshah Gandhi v. H.M. Seervai* (, 1970 [2] SCC 484). In the above case, notice was issued to the petitioner - Advocate for provisional misconduct by State Bar Council under Section 35. The State Bar Council acquitted the Advocate. An appeal was filed by the Advocate General, Maharashtra. The question arose as to whether the Advocate General is a person aggrieved to file appeal before the Bar Council of India. The

Apex Court had occasion to consider the definition of aggrieved person in paragraph 11 which is as follows:

"11. From these cases it is apparent that any person who feels disappointed with the result of the case is not a "person aggrieved". He must be disappointed of a benefit which he would have received if the order had gone the other way. The order must cause him a legal grievance by wrongfully depriving him of something. It is no doubt a legal grievance and not a grievance about material matters but his legal grievance must be a tendency to injure him. That the order is wrong or that it acquits some one who he thinks ought to be convicted does not by itself give rise to a legal grievance. These principles are gathered from the cases cited and do not, as I shall show later, do violence to the context in which the phrase occurs in the Advocates" Act. Although I am aware that in *Seven Oaks Urban District Council v. Twynam*, 1929 (2) KB 440 at p. 443, Lord Hewart C.J. uttered words of caution, again emphasised by Lord Parker C.J. in 1959 (1) QB 384 (*supra*), in applying too readily the definitions given in relation to other statutes but I do not think I am going beyond what Lord Hewart, C.J. said and what Lord Parker C.J. did in the case. Lord Parker observed:

".....As Lord Hewart C.J. pointed out in 1929 (2) KB 440: "But as has been said again and again there is often little utility in seeking to interpret particular expressions in one statute by reference to decisions given upon similar expressions in different statutes which have been enacted *alio intuitu*. The problem with which we are concerned is not, what is the meaning of the expression, aggrieved in any one of a dozen other statutes, but what is its meaning in this part of this statute?" Accordingly, I only look at the cases to which we have been referred to see if there are general principles which can be extracted which will guide the Court in approaching the question as to what the words "person aggrieved" mean in any particular statute".

If I may say respectfully I fully endorse this approach. I am now in a position to examine the Advocates" Act but before I do so I must refer to a case near in point to this case, than any case considered before."

Analysing the provisions of the Advocates Act, 1961, the Apex Court held that the Advocate General is not a prosecutor on behalf of the Bar Council. The Apex Court after considering the role and function of the Advocate General in the case of disciplinary proceedings against the Advocate held that he cannot be a person treated to be aggrieved whether the decision is in favour or against him. In paragraphs 31 and 32 the following was stated:

"31. In view of the common roll maintained by the Bar Council of India it appears to me that if anybody represents the Bar it would be the Bar Council of India and in the case of the States, the Bar Council of the State. The Advocate General has no right to speak on behalf of the body of the advocates as if he represented them and their

interests neither is this privilege expressly conferred on him, nor can it be implied from any of the provisions of the Act. The question, therefore, arises in what capacity does the Advocate General appear before a disciplinary committee? It is obvious that he is not a prosecutor on behalf of the Bar Council because if he was one, his presence would be more necessary at the stage at which the disciplinary committee considers in limine to decide whether the matter should be proceeded with at all. The next question is: why is he summoned at all? In my opinion, the Advocate General is not noticed and brought before the court because he is a prosecutor or is to be bound by the order of the disciplinary committee. He represents no interest there and is heard merely because he is the chief counsel of the State and therefore his assistance at the hearing is useful. The fact that he need not appear by himself and may appear through an advocate renders his position a little weaker in the matter of his grievance. If he is to be treated as a "person aggrieved" he must argue the case himself. The fact that he appears through a counsel shows that the intention is merely to have the opinion of a person who is neither siding with the complainant nor with the advocate and who will thus have unbiased and impartial approach to the case. The Advocate General is generally a lawyer of some standing having made a mark in the profession and his contribution to the deliberations of the disciplinary committee is welcome because thus the disciplinary committee is helped to reach a proper conclusion.

32. If he is not a person summoned to be bound by the order but a person who is heard in a dispute between others merely to be of assistance in reaching the right conclusion he can hardly have a grievance. The Advocate General must after he has done his duty leave the matter to the complainant and the advocate or the Bar Council to take the matter further if they choose. In no event the Advocate General is in the nature of a party having independent rights which he can claim are injured by the decision. The decision does not deny him anything nor does it ask him to do anything. It is thus that Lord Denning says that in these disciplinary proceedings the Attorney General is not a party as in a *lis* and after the decision, his duty ends. Lord Denning points this out clearly by saying that the Advocate General in that case could not have been aggrieved by the order of the Deputy Judge if he had acquitted the delinquent advocate in that case. The Attorney General's interest was found by Lord Denning in relation to the Crown and the Colony and that too for the special reason that appeal court had denied that the Deputy Judge possessed jurisdiction to hear the case. In our country the Advocate General does not represent the Executive or the Legislature or the Judiciary in disciplinary proceedings before the disciplinary committee. His function is advisory and more akin to an *amicus curiae*. He is not to take sides except in so far his arguments lend weight to the case of the one side or that of the other. Beyond that he is not interested in the dispute either in his personal capacity or in his capacity as an Advocate General. He does not represent the Government in these proceedings. If the Government was interested the notice would have gone to it. In other statutes, where the Central Government is vitally

interested, as for example, in the Chartered Accountants' Act, the notice does not go to the Advocate General but to Government and the Government appears through the Advocate General. The Advocate General under the Act finishes his duty when the hearing is over and he cannot be considered to be a party interested or a "person aggrieved". I do not find anything in the Act which indicates that the Advocate General is to be treated as a "person aggrieved" by a decision whether in favour of the advocate or against him. Indeed it would have been the easiest thing to give a right of appeal to the Advocate General *eo nomine* without including him in the compendious phrase a "person aggrieved". If he is not noticed, the order would be held to deny him something which the law entitled him to. That is quite different. The larger proposition contended for by Mr. Desai is therefore not acceptable to me."

20. The above case was on its own facts and the Apex Court held that the Advocate General is not a person aggrieved since none of his rights were being affected by the decision taken by the Bar Council regarding disciplinary proceedings against an Advocate. He was neither held to be a Prosecutor against the Advocate nor represented body, State Bar Council. The above case related to a Statute disclosing different purpose and object and hence the said case does not help the appellant in the present case.

21. In *Inspecting Assistant Commissioner, Acquisition Range, Patna v. Nand Kishore Singh and Others* (, 1984 [148] ITR 721) provisions of Section 269H of the Income-Tax Act, 1961 which provides for an appeal against the order of the Tribunal passed under Section 269G came up for consideration. Right of appeal was given as per the Statute on "Commissioner or any person aggrieved". With regard to transfer of a double storied building on 16.08.1973, proceedings were initiated by the competent authority alleging that valuation shown in the sale deed does not refer to the fair market value. The competent authority after enquiry decided to pass an order for acquisition of the property under Section 20A of the Act. The transferee filed an appeal before the Income-Tax Appellate Tribunal which appeal was allowed. Against the order of the Appellate Tribunal, appeal was filed by the Inspecting Assistant Commissioner in the High Court. Learned counsel for the respondent raised a preliminary objection that the appeal is not maintainable and that only Commissioner can file the appeal. Overruling the objections, the Division Bench of the High Court held that the Inspecting Assistant Commissioner was a person aggrieved. The following was held in page 729:

"In the case of *Ebrahim Aboobakar v. Custodian-General of Evacuee Property*, , AIR 1952 SC 319, the person on whose information an enquiry was started by the custodian under the Evacuee Property Act was held to be an "aggrieved person" for the purpose of filing an appeal. When a person is given a right to raise a contest in a certain matter and his contention is negatived, then, he is certainly a person aggrieved by the order disallowing his contention. In the instant case, the IAC, the

Competent Authority, had not only initiated the proceeding but he was made the sole respondent before the Appellate Tribunal to submit to a decision and when that decision went against him how can it be said that he is not a "person aggrieved" to file an appeal against that order. I, therefore, hold that the IAC, the Competent Authority, is an "aggrieved person" within the meaning of S. 269H and there is no infirmity in the appeal which has been filed by him. The preliminary objection taken by the respondents, is, accordingly, overruled."

22. The Court of Appeal had occasion to consider the phrase "person aggrieved" in the context of Public Health Act, 1936 in *Cook v. Southend Borough Council* (1990 [1] All E.R. 243). Appellant's hackney carriage vehicle and driver's licence was revoked by the Borough Council. The appellant appealed to the Magistrate Court which made an order for cost against the Council. The Council appealed to the Crown Court claiming to be a person aggrieved. Council's appeal was allowed by the Crown court against which the appellant approached the High Court. The High Court held that since the Magistrate has made an order for cost Council is a person aggrieved. Appellant filed an appeal in the Court of Appeal. The Court of Appeal after referring to all earlier judgments and considering the phrase "person aggrieved" stated in pages 254 - 255:

"...the fact that many of the statutory provisions which give a right of appeal to a person aggrieved are doing little more than giving a statutory right to judicial review. The approach of the courts on the appeal is the same (see eg. s. 245 of the Town and Country Planning Act 1971). In the case of such a statutory provision, it would be nonsense to regard the public authority as not being a person aggrieved since it would in any event be entitled to obtain the same relief by applying for judicial review. In the case of the present appeal provision the position is not the same. While the council would be entitled to apply for judicial review if it has no right to appeal, the court's powers on the appeal are much more extensive than they would be on an application for judicial review since the appeal is a rehearing. In general, if Parliament intends the person against whom action is taken by the public authority to have a right of appeal, I cannot see any reason why Parliament should not also intend that the public authority should have a right of appeal."

23. One more case which is relevant to be noted is the judgment of the Apex Court in *Registrar of Companies v. Rajshree Sugar & Chemicals Ltd.* (, 2000 [6] SCC 133). A complaint was filed by the Registrar of Companies against the respondent alleging that the respondent had in violation the provisions of Section 113 of the Companies Act defaulted in transfer of shares within the time specified in that Section. The Chief Judicial Magistrate dismissed the complaint on the ground that it was barred by limitation under Section 469 of the Code of Criminal Procedure. A revision was filed in the High Court which upheld the order of the Magistrate but Court also held the appellant incompetent to file appeal. A question arose as to whether the Registrar of Companies can be treated to be an "aggrieved person". Facts of the case have been

noted in paragraphs 3 and 4 which are as follows:

"3. The issue to be decided in this appeal relates to an offence allegedly committed by the respondents under S. 113 of the Companies Act, 1956 (referred to as "the Act"). The complaint was filed by the appellant against the respondents on 28-8-1992 alleging that the respondents had, in violation of S. 113 of the Act, defaulted in transfer of shares within the time specified in that section. The Chief Judicial Magistrate, Coimbatore by his order dated 30-3-1993 dismissed the complaint on the ground that it was barred by limitation under S. 468 of the Code of Criminal Procedure (for short "the Code").

4. The appellant filed a petition under S. 397 and 401 Cr.P.C. before the High Court of Madras praying for revision of the order dated 30-3-1993. The High Court by the impugned judgment not only upheld the order of the Trial Court but also held that the appellant was incompetent to file a complaint in respect of an offence under S. 113 of the Act."

Section 469 of the Code of Criminal Procedure has been referred to in paragraph 9 of the judgment which is to the following effect:

"9. The date on which period of limitation is to commence has been provided for in S. 469 of the Code in the following manner:

"469. Commencement of the period of limitation.-(1) The period of limitation, in relation to an offender, shall commence,-

(a) on the date of the offence; or

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier;"

In Paragraph 17, the Apex Court held that Registrar of Companies was an aggrieved person. It is relevant to quote paragraph 17:

"17. The phrase "person aggrieved" has not been defined in the Code. However, as far as offences under the Companies Act are concerned, the words must be understood and construed in the context of S. 621 of the Act. If the words "person aggrieved" are read to mean only "the person affected" by the failure of the company to transfer the shares or allot the shares, then the only "person aggrieved" would be the transferee or the allottee, as the case may be. Under S. 621 of the Act, no court can take cognizance of an offence against the Companies Act except on the complaint of a shareholder, the Registrar or the person duly authorised by the Central Government. Where the transferee or allottee is not an existing shareholder of the company, if the words "person aggrieved" are read in such a limited manner, it would mean that S. 469(1)(b) of the Code would be entirely inapplicable to offences under S. 113 of the Act. There is, in any event, no justification to interpret

the words "person aggrieved" as used in S. 469(1)(b) restrictively particularly when, as in this case, the statute creating the offence provides for the initiation of the prosecution only on the complaint of particular persons. Having regard to the clear language of S. 621 of the Act, we have no manner of doubt that the appellant would be a "person aggrieved" within the meaning of S. 469(1)(b) of the Code in respect of offence (except those under S. 545) against the Companies Act."

24. Now we come to the judgments which have been heavily relied on by the learned counsel for the petitioner, i.e. Director of Enforcement, Madras v. Rama Arangannal (, AIR 1981 Madras 80) and Mohtesham Mohd. Ismail v. Spl. Director, Enforcement Directorate and Another (, 2007 [8] SCC 254). In the Madras case provisions of Sections 52 and 54 of the Foreign Exchange Regulation Act, 1973 came up for consideration. An order of adjudication was passed by the Director of Enforcement which was set aside by the Appellate Board. Appeal was filed by the Directorate of Enforcement against the order of the Appellate Board in the High Court. The Appellate Board has allowed the appeal filed by the respondent and set aside the order of adjudication dated 28.08.1972 by which the respondents were held guilty of the 1973 Act. The Director of Enforcement filed an appeal claiming himself to be the aggrieved person. A preliminary objection was raised that the appeal is not maintainable at the instance of the Director of Enforcement. Preliminary objection raised by the respondent is noted in paragraph 2 which is quoted below:

"The appellant, the Director of Enforcement, has filed the appeal claiming himself to be aggrieved against the said order of the Foreign Exchange Regulation Board. A preliminary objection has been taken by the respondents herein as to the maintainability of the appeal by the Director of Enforcement. The preliminary objection raised by the learned counsel for the respondent is two-fold; (1) Under the Foreign Exchange Regulation Act, 1973, it is only the Central Government which can be taken to be aggrieved against the decision of the Foreign Exchange Regulation Appellate Board under Section 54 of the Act, allowing the appeal filed by the respondents and the Director of Enforcement who passed the initial order of adjudication cannot file the appeal treating himself as an aggrieved person; (2) The Director of Enforcement being himself a quasi judicial Tribunal passing an order of adjudication cannot be, in any event, taken to be aggrieved against the decision of the Foreign Exchange Regulation Appellate Board reversing his decision, and that therefore, this appeal filed by the Director or Enforcement cannot, in any event be maintained."

An application was filed by the Director of Enforcement seeking amendment of the cause title to substitute the name of the appellant as Central Government of India, represented by the Special Director, Enforcement. The said application was rejected by the High Court. The High Court held that it is not open to the Director of Enforcement or the Central Government to say that the appeal has been filed by the



Central Government. Referring to Section 54 of the Regulation Act, the Madras High Court held that Section 54 treats the Central Government as aggrieved party for filing appeal. It is useful to quote Section 54 of the Regulation Act which is as follows:

"54. Appeal to High Court--An appeal shall lie to the High Court only on questions of law from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of section 52: Provided that the High Court shall not entertain any appeal under this section if it is filed after the expiry of sixty days of the date of communication of the decision or order of the Appellate Board, unless the High Court is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Explanation--In this section and in section 55, "High Court" means--

(i) the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain; and

(ii) where the Central Government is the aggrieved party, the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain."

The Madras High Court held that since only the Central Government can file appeal under Section 54, the appeal by the Director of Enforcement is not maintainable. It was also observed that the Director of Enforcement cannot be treated as an aggrieved party since while passing the order he has acted only as a Quasi Judicial Tribunal and such Quasi Judicial Tribunal cannot have a grievance when the order is set aside by the higher authority. The following was stated in paragraph 4:

"4. On the question as to the maintainability of the appeal, it is seen that the Explanation to Section 54 of the Foreign Exchange Regulation Act, 1973 treats only the Central Government as an aggrieved party for the purpose of filing an appeal to the High Court in respect of orders passed by the Foreign Exchange Regulation Appellate Board under that Section. Therefore, only the Central Government can file and prosecute an appeal against the order of the Appellate Board, and not any other authority. In this case, the appeal has been filed by the Director of Enforcement Who is the initial authority who passed the adjudication order against the respondents and whose order has been set aside by the Appellate Board on an appeal filed by them. Therefore, the Director of Enforcement cannot be said to be aggrieved by the order of the Appellate Board merely because its order of adjudication has been set aside by the Appellate Authority. If that were to be possible, every subordinate Tribunal can file an appeal against the order of the Appellate Tribunal reversing its decision, to a further appellate forum. The Director or Enforcement cannot be treated as an aggrieved party, for while passing the order of adjudication, he has acted only as a quasi judicial Tribunal and such a quasi judicial Tribunal cannot have a grievance when its order is set aside by a higher

appellate forum. If he entertains a grievance when the appellate forum sets aside its order, then he should be taken to have had a bias in the dispute which has been adjudicated by him. Therefore it will be against the principle of natural justice if we assume that the Director of Enforcement who is a quasi judicial tribunal adjudicating a matter between the Government and the person sought to be proceeded against for violation of the provisions of the Act, had an interest, personal or otherwise, in the matter which was the subject matter of the dispute which he adjudicated. It would have been a different matter if the statute authorised the Director of Enforcement to file an appeal. But admittedly in this case, the Director of Enforcement has not been statutorily authorised to file an appeal against the order of the Appellate Board at the instance of the Government of India or otherwise. If the quasi judicial Tribunal is expected question the orders of the appellate bodies, a specific power has to be given to the initial Tribunal under the relevant statute. Under Sections 253 and 256 of the Income-tax Act the Income-tax Officer who passes the original order of assessment in his capacity as quasi judicial Tribunal, is enabled to file an appeal against the order of the Appellate Assistant Commissioner setting aside his orders, on the directions or at the instance of the Commissioner of Income-tax. Under Section 37 of the Tamil Nadu Central Sales-tax Act, power is given to the Deputy Commissioner of Commercial Taxes to file a revision to the High Court against the order of the Sales-tax Appellate Tribunal. We can cite many such instances where the statute specifically enables the initial quasi judicial authority to file an appeal against the reversal of its judgment by the appellate authority to a further appellate or revisional forum. Such a statutory provision is necessary for the reasons afore-stated as otherwise, it will lead to the inevitable conclusion that the initial authority had an interest in the dispute before it, and, therefore considers itself aggrieved when its judgment was reversed by an appellate forum. In this view of the matter, the Director of Enforcement, who is the appellant in this case cannot be said to be an aggrieved person."

25. In so far as the first observation of the Madras High Court that under Section 54 it is only the Central Government which has been given right of appeal, we are unable to persuade ourselves with the above submission. Section 54 states that an appeal shall lie to the High Court only on questions of law from any decision or order of the Appellate Board under sub-section (3) or sub-section (4) of Section 52. In the Explanation High Court has been defined. A perusal of the section indicate that Explanation was added to define High Court in which the appeal shall lie. Explanation (i) states that the High Court shall be the High Court within the jurisdiction of which the aggrieved party ordinarily resides or carries on business or personally works for gain. Further, Explanation (ii) which is relevant states that "where the Central Government is the "aggrieved party", the High Court within the jurisdiction of which the respondent, or in a case where there are more than one respondent, any of the respondents, ordinarily resides or carries on business or personally works for gain. Explanation (ii) was thus only for purposes of explaining

and indicating High Court where the appeal is to be filed. The opening words begin with the expression "where the Central Government is the aggrieved party". The above Explanation cannot be read that Section 54 lay down that it is only the Central Government which is an aggrieved party entitled to file appeal. No such meaning or indication can be read in Section 54. Thus observation of the Madras High Court that under Section 54 only the Central Government can file appeal does not commend us. After coming to the above conclusion, the Madras High Court held that Director of Enforcement is not a competent party to file appeal. Second observation made by the Madras High Court is that the Director of Enforcement cannot be treated as an aggrieved party since while passing the order he has acted only as a Quasi Judicial Tribunal and such Quasi Judicial Tribunal cannot have a grievance when the order is set aside by the higher authority.

26. In the present case, pleadings are on the record to the effect that appeal has not been filed by the Assistant Director who was the Adjudicating Authority. It has been clearly stated in paragraph 4 of the counter affidavit that another Assistant Director and not the Adjudicating Authority had preferred the appeal. Paragraph 4 of the counter affidavit is quoted below:

"4. At the outset it is submitted that the Assistant Director of Enforcement is both empowered to investigate cases and also act as quasi judicial authority for adjudicating contraventions of FEMA and also to file appeals on behalf of the Central Government. In this case, another Assistant Director and not the Adjudicating Authority himself has preferred an appeal and there is no bar under FEMA, 1999 any Assistant Director to file an appeal against the order of another Assistant Director (Adjudicating Authority) and Section 17(2) of FEMA states that "any person aggrieved by an Order made by the Adjudicating Authority, being an Assistant Director of Enforcement or Deputy Director of Enforcement, may prefer an appeal to the Special Director (Appeals)". Hence, the appeal preferred by the Assistant Director of Enforcement before the Special Director (Appeals), is maintainable and the principles of natural justice have been followed at each and every stage."

27. Copy of the complaint filed by the Assistant Director, viz., Dohnson K. George is Ex. P1 describing himself to be the complainant in the complaint. Adjudication order was passed by another Assistant Director, viz., M. Gangadharan, who described himself as the Assistant Director, Adjudicating Authority. Appeal before the Special Director was filed by another Assistant Director and not by the Assistant Director who passed the adjudicating order dated 03.07.2013. Present is not a case where the Adjudicating Authority has filed appeal. As noted above, the Central Government by Notification under Section 16(1) is authorised to appoint Adjudicating Authority to hold enquiry and further under Section 16(3) enquiry shall be held only on a complaint in writing made by an Officer authorized by the order of the Central Government or State Government. The Assistant Director thus is authorised to carry on investigation of violation under Section 13 and file a complaint. An Assistant

Director is also notified as Adjudicating Authority. In the Notification issued by the Central Government appointing the Adjudicating Authority the respective jurisdiction is also to be notified as per Section 16(4). Thus present is not a case where the Adjudicating Authority has filed the appeal. We are thus of the opinion that the judgment of the Madras High Court is distinguishable.

28. Another judgment on which reliance has been placed is *Mohtesham Mohd. Ismail v. Spl. Director, Enforcement Directorate and Another* (, 2007 [8] SCC 254). In the above case question was whether the Special Directors appointed under the Foreign Exchange Regulation Act, 1973 can prefer the appeal before the High Court against the order passed by the Foreign Exchange Regulation Appellate Board. Against the appellant proceedings were initiated for contravention of Section 73 of the Regulation Act. The Special Director adjudicated the matter and by order dated 06.10.2013 imposed penalty of Rs. 2,50,000/-. Appellant preferred an appeal before the Appellate Board and the appeal was allowed. The appeal was filed by the Special Director. Preliminary objection was raised that the appeal could be filed only by the Central Government and not by the Adjudicating Authority. Judgment of the Madras High Court in *Director of Enforcement, Madras's case* (supra) was relied. In the above case, learned counsel for the respondent has relied on the Notification dated 22.09.1989 which had been quoted in the judgment and referring to the aforesaid Notification the Apex Court held that no Notification was filed to show that the Authority concerned was empowered to prefer appeal on behalf of the Central Government. It was further held that the Central Government was not a party to the appeal. Further, appeal was filed in official capacity as Adjudicating Authority and not as delegate of the Central Government. The Apex Court further held that a Quasi Judicial Authority cannot prefer an appeal being aggrieved and dissatisfied with the judgment of the Appellate Authority. It is useful to quote paragraphs 8, 15 and 16 of the judgment:

"8. Mr. Ashok Bhan, learned Counsel appearing on behalf of the respondents, however, relied upon a notification dated 22.09.1989, which reads as under:

"In exercise of the power conferred by sub-section (1) of S. 4, read with clause (e) of S. 3 of the Foreign Exchange Regulation Act, 1973 (46 of 1973), the Central Government hereby appoints Shri S.S. Ranjhan to be an officer of Enforcement with the designation of Special Director of Enforcement, for the purpose of enforcing the provisions of the said Act; and in exercise of the powers conferred by S. 51 of the said Act hereby empowers him to adjudicate cases of contravention of any of the provisions thereof, other than S. 13, clause (a) of sub-section (1) of S. 18 and clause (a) of sub-section (1) of S. 19 or of any rule, direction or order made thereunder."

15. From the notification dated 22.09.1989, whereupon reliance has been placed by Mr. Bhan, it would appear that the officer authorized by the Central Government for the purpose of enforcing the provisions of the Act was specifically empowered to adjudicate upon the dispute. The said notification itself is a pointer to the fact that

for the purpose of exercising the functions of the Central Government under one provision or the other, the officer concerned must be specifically empowered in that behalf. A general empowerment would, however, be permissible. Before the High Court, no notification was filed to show that the authority concerned was empowered to prefer an appeal on behalf of the Central Government. The Central Government was not even impleaded as a party to the appeal. First Respondent did not file the appeal on behalf of or representing the Central Government. It was filed in its official capacity as the adjudicating authority and not as a delegatee of the Central Government.

16. An adjudicating authority exercises a quasi judicial power and discharges judicial functions. When its order had been set aside by the Board, ordinarily in absence of any power to prefer an appeal, it could not do so. The reasonings of the High Court that he had general power, in our opinion, is fallacious. For the purpose of exercising the functions of the Central Government, the officer concerned must be specifically authorized. Only when an officer is so specifically authorized, he can act on behalf of the Central Government and not otherwise. Only because an officer has been appointed for the purpose of acting in terms of the provisions of the Act, the same would not by itself entitle to an officer to discharge all or any of the functions of the Central Government. Even ordinarily a quasi judicial authority can not prefer an appeal being aggrieved by and dissatisfied with the judgment of the appellate authority whereby and whereunder its judgment has been set aside. An adjudicating authority, although an officer of the Central Government, should act as an impartial Tribunal. An adjudicating authority, therefore, in absence of any power conferred upon it in this behalf by the Central Government, could not prefer any appeal against the order passed by the Appellate Board."

29. Proposition laid down by the Apex Court in the aforesaid case is that the Special Officer who files an appeal is not entitled to file an appeal on behalf of the Central Government unless there is a specific or general order authorizing him to file the appeal. Further in the facts of the above case the Officer was appointed by Notification dated 22.09.1989 for the purpose of empowering him to adjudicate the cases of contravention of the provisions of the Act. Thus Central Government never authorized the Officer to file appeal on its behalf. It was further held that the Adjudicating Authority which exercised the Quasi Judicial power cannot challenge an order by which order of the Adjudicating Authority has been set aside. There cannot be any dispute to the proposition laid down by the Apex Court in the above case. However, the present is not a case where the appeal has been filed by the Assistant Director who was the Adjudicating Authority rather it has been stated that the appeal is by another Assistant Director. As noted above, another Assistant Director different from the Adjudicating Authority had conducted investigation and filed a complaint. The complaint was filed by the Assistant Director who was different from the Adjudicating Authority. Further, present is not a case where appeal was being filed on behalf of the Central Government. No such submission was raised either

before the Appellate Authority or before us. Thus judgment of the Apex Court which was considering the case of filing of appeal in the High Court, i.e., Section 54 of the Regulation Act akin to Section 35 of the 1999 Act whereas in the present case we are concerned with Section 17(2) of the 1999 Act. The above judgment of the Apex Court is thus clearly distinguishable. From the foregoing discussion, the following reasons can be culled out to hold that appeal filed by the 4th respondent under Section 17(2) of the 1999 Act is fully maintainable:

(a) The Assistant Director who filed the appeal was not the Assistant Director who adjudicated the dispute and passed the order on 03.07.2013. According to the scheme of the Act Assistant Director is authorised to carry on investigation as well as file complaint under Section 16(3) of the 1999 Act. Assistant Director is also Adjudicating Authority appointed by Notification issued by the Central Government under Section 16(1) of the 1999 Act. However, in the present case the Assistant Director who filed the appeal was different from the Assistant Director who adjudicated the dispute. Hence the appeal filed by the Assistant Director cannot be held to be an appeal by the Adjudicating Authority itself.

(b) The Assistant Director had filed the complaint, Ext. P1, on the basis of which adjudication was initiated, the adjudication resulting in order dated 03.07.2013 rejecting the confiscation of amounts seized which gave ample cause of action to the Assistant Director who had filed the complaint, i.e., the Assistant Director to file an appeal.

(c) Section 19 of the 1999 Act provides appeal to the Appellate Tribunal against an order; (i) passed by the Adjudicating Authority other than those referred to in Section 17(1); and (ii) an order of the Special Director of Appeals. Under Section 17, appeal is provided to Special Director only against the Adjudicating Authority (Assistant Director or Deputy Director of Enforcement). Thus appeal under Section 19 shall lie to the Appellate Tribunal when adjudication is made by an authority other than the Assistant Director and Deputy Director. In event it is held that a person aggrieved within the meaning of Sec. 17(2) cannot include the Assistant Director who is the complainant or Director of Enforcement who is empowered to enforce the provisions of the Act, there will be no remedy available against an order of the Adjudicating Authority, viz., Assistant Director and Deputy Director in the event of they passing illegal adjudication order. For eg., in the event the Assistant Director passes an order finding contravention of the provisions of Section 13 but rejects the application on technical ground whether there shall be no remedy against such an order. The right of appeal given to the person aggrieved has to be given meaning and purpose which may advance the object of the Act. Denying right of appeal against any order passed by the adjudicating authority shall be defeating the purpose and object of the Act. Hence we are inclined to take the view that the Assistant Director, who is also a complainant can file appeal before the Special Director under Section 17(2).

(d) In the counter affidavit respondents have brought an order dated 6.3.2009 issued by the Government of India, Ministry of Finance (Annexure R1([b])) which is to the following effect:

"F. No. 16/85/2008-Ad-Ed

Government of India Ministry of Finance,  
Department of Revenue

New Delhi, the 6th March, 2009

#### ORDER

The officers of the rank of Assistant Director and above in the Directorate of Enforcement, Ministry of Finance, Department of Revenue, Government of India, New Delhi are hereby empowered for the purpose of Section 54 of the Foreign Exchange Regulation Act (FERA), 1973 and Section 55 of Foreign Exchange Management Act FEMA), 1999."

When Officer of the rank of Assistant Director and above in the Directorate of Ministry of Finance has been empowered to file appeal under Section 35 of the 1999 Act in the High Court, we are not persuaded to accept the submission that Assistant Director was incompetent to file an appeal before the Special Director. More so, both in the memorandum of appeal as well as the counter affidavit it has been categorically stated that the appellant is authorised to file appeal.

30. In view of the foregoing discussion, we are of the view that the submission raised by the learned counsel for the appellant that the 4th respondent was not competent to file the appeal and the appeal was not maintainable has to be rejected.

31. Coming to the second issue that order of the Appellate Authority is in violation of the principles of natural justice, suffice to say that the appellate order itself has noted that notices were issued to all the petitioners and the counsel for the petitioners was also heard. In paragraph 8 of the order the following has been stated:

"8. After condoning the delay on the part of the appellant, in filing the appeal, petition, notices were issued to all concerned to make submissions or defence statements against the appeal petition and opportunities of being heard personally were also provided to all concerned. According to Shri G. Suresh Babu, Assistant Legal Advisor to the appellant appeared before me on various dates, filed details and made oral submissions."

32. Learned counsel for the appellant further submitted that submissions regarding findings recorded by the Adjudicating Authority that there was contravention, were not allowed to be raised before the Appellate Authority which is nothing but violation of the principles of natural justice. It is relevant to note that the

Adjudicating Authority has recorded the findings of contravention and imposed penalty however refused to confiscate the amount seized. No appeal was filed by the appellants against the order of the Adjudicating Authority imposing penalty. Thus the appellants were not allowed to raise submissions regarding finding of contravention. Scope of the appeal filed was as to whether the Adjudicating Authority has rightly refused to confiscate the amount seized or the amount deserves to be confiscated. We do not find any violation of principles of natural justice as contended by the learned counsel for the appellant.

In the result, we find no merit in the appeal. Writ Appeal is dismissed.

Parties shall bear their costs.

After we pronounced the judgment, learned counsel for the appellants made an oral prayer for grant of certificate under Article 134A of the Constitution of India. As per Article 134A r/w. Article 132(1), certificate under Article 134A may be given when a case involves substantial question of law as to the interpretation of the Constitution of India. In the present writ appeal, we don't find any such substantial question of law is involved as to the interpretation of this Constitution so as to enable us to grant the certificate under Article 134A. The prayer of learned counsel for the appellants to grant certificate under Article 134 is refused.