The Hongkong and Shanghai Banking Corporation Ltd v. State of Maharashtra & Ors.

Whether the GST Appellate Tribunal (GSTAT), constituted under the Central Goods and Services Tax Act, 2017, has jurisdiction to pass interim orders — specifically, whether it can stay recovery proceedings during the pendency of an appeal before it.

Date of Order: February 20, 2026
Case Law No: GIB-BHC-2026-68
Source: GST INDIA Biz (www.gstindia.biz)

CASE DESCRIPTION / SUMMARY

Background

An Order-in-Original was passed under the CGST Act on 18th December 2023, confirming a tax liability against the Petitioner. The Petitioner filed an appeal before the Appellate Authority, which was rejected by an Order-in-Appeal dated 12th June 2024. The Petitioner then filed a further appeal before the GST Appellate Tribunal on 5th February 2026. In the interregnum, the Petitioner received demand intimations by e-mails dated 3rd February 2026 and 6th February 2026. The Petitioner informed the Revenue that the demand amount had been deposited and adjusted through Form GST DRC-03A and that an appeal was pending before the Tribunal. Despite this, a Recovery Notice dated 6th February 2026 was issued and steps were sought to be taken to implement the same. The Petitioner thereupon filed a Writ Petition before the Bombay High Court under Article 226 of the Constitution, contending that coercive recovery proceedings ought not to continue while the appeal was pending before the Tribunal.

Relevant Facts

The Revenue's counsel submitted that since the appeal was pending before the Tribunal, the Petitioner should have approached the Tribunal for interim relief — including on the basis of Section 112(9) of the CGST Act, which provides that upon payment of the pre-deposit amount under Section 112(8), recovery proceedings for the balance amount shall be deemed stayed till disposal of the appeal. The Petitioner's counsel countered that there is no express provision under the CGST Act or the Rules framed thereunder empowering the Tribunal to grant interim orders staying recovery proceedings, and therefore no efficacious alternative remedy existed before the Tribunal, necessitating recourse to this Court under Article 226. The sole question before the Court was whether the GSTAT, under the statutory scheme of Sections 111, 112 and 113 of the CGST Act, is empowered to pass interim orders, including a stay of recovery proceedings, pending disposal of an appeal.

Court Observations (Verbatim)

"*...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...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.*"

— Para 10

"*...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.*"

— Para 11

"*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.*"

— Para 12

GST Appellate Tribunal (Procedure) Rules, 2025 — Notification dated 24 April 2025, Ministry of Finance:

Rule 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."

Rule 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..."

(Quoting Supreme Court in ITO Cannanore v. M.K. Mohammed Kunhi): "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."

— Para 14 (SC observation relied upon)

Final Verdict

The Court held that GSTAT has jurisdiction to pass interim orders including stay of recovery, and rejected the Petitioner's contention to the contrary. The Writ Petition was disposed of with a direction to the Petitioner to file an interim application before the Tribunal within two weeks. As limited interim protection, the Recovery Notice dated 6th February 2026 was restrained from being acted upon until the Tribunal decides such interim application. Tribunal Registry was also directed to enable filing of interim applications on its portal. No order as to costs.

Cases Referred by Court

Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi
Supreme Court of India | 1968 SCC OnLine SC 71 | *Held: ITAT has inherent power to stay recovery pending appeal even without express provision, as power to pass "such orders as it thinks fit" under Section 254 of the Income Tax Act implies all ancillary and incidental powers to make appellate jurisdiction effective.*