

**Address by Mr. Justice R.K. Abichandani, President,
CESTAT, at its Silver Jubilee function held on
6.10.2007.**

Hon'ble the Chief Justice of India Mr. Justice K.G. Balakrishnan, Hon'ble the Finance Minister Mr. P. Chidambaram, Hon'ble Mr. Justice S. Kapadia, Judge, Supreme Court of India, my esteemed colleagues, Hon'ble former judges, former Presidents and Members of this Tribunal, other dignitaries and friends gracing this occasion.

In this era of awareness and expectations, the public authorities constitutionally and statutorily created are expected to adhere to the aims of their creation and fulfil the aspirations of the people.

2. Tax Tribunals have a delicate task to perform in interpreting and implementing the taxing statutes. They are created essentially to strike a balance on the scales of law so that the revenue flow intended by law is not choked and the tax payer is not made to undergo traumas of uncertainty and oppressive extractions.

3. Appellate Tax Tribunal is expected to have judicial supervision in the decision making processes in the field of law that has complexities caused both by the ever changing textual provisions and motivated approaches. It is a field of specialty that tends to be a preserve of a few professionals who harness their ingenuities to achieve positive results for their clients.

4. The idea underlying establishing autonomous appellate tribunals to hear tax appeals is to provide an effective control mechanism over tax administration. It is, therefore, essential that the tribunal consists of persons with expert knowledge and experience in the taxation field. This calls for better service conditions and benefits to attract well qualified, experienced and dedicated persons to become members of the tribunal.

5. As on today the sources of appointment to the Appellate Tribunal are the Bar, District Judges and Revenue Commissioners. From the Bar only those who have actively

practiced and handled revenue cases in the Supreme Court, High Courts or the Appellate Tribunal should be considered suitable for appointment. Though district judges have no occasion to deal with the revenue aspects of excise and customs duties, service tax or anti-dumping duties, their wide experience has been useful. However, mere magisterial experience of handling cases involving prosecutions under the tax laws cannot give sufficient insight in the nuances of taxing statutes. Interpretative skills of high order are required, with adequate knowledge of economic concepts, to balance public and private interests while construing and applying the complex provisions of the taxing statutes and their rules, innumerable notifications, and orders made from time to time.

6. Combination of professional experience and administrative expertise of Commissioners is the hallmark of the system that equilibrates the approaches in the decision making processes of the Tribunal. The Commissioners

provide an important source for manning the Appellate Tribunal. However, experience of at least three years in representing the Revenue Department in the appeals before the Appellate Tribunal, should be required for eligibility for elevation to the Appellate Tribunal. The ratio of appointments from the eligible tax lawyers and the Chief Commissioners /Commissioners should be equal, and the posts should be ordinarily filled up from these two sources.

7. The emoluments and service benefits of the incumbents of the Appellate Tribunal should be nearer to those of the Judges of High Courts, having regard to the nature of their duties and the services from which the appointees are to be drawn. Only such persons who will have a sufficiently long tenure on their appointment, should be considered for elevation to the post. Needless to say that the appointments should be purely on merits that includes integrity of high order keeping in view the sensitive nature of the work involved.

8. Since the High Courts have appellate powers under the taxing statutes it should be considered not only appropriate but also necessary to elevate members from the Appellate Tribunal to the High Courts so that specialized work is dealt with by those who have gained expertise on the subject. There is ample tax litigation in the High Courts to justify tapping this source which is readily available with the constitutional backing of explanation (aa) to Article 217(2). It will be a befitting recognition of the importance of this Tribunal that completes 25 years, to consider the members of this Tribunal for elevation to the High Courts whenever vacancies arise and for that purpose to call for the relevant particulars of the eligible members. This will be an added incentive for talented and deserving bar members and Commissioners to join the Tribunal as members. I request and urge the Hon'ble the Chief Justice of India and Hon'ble the Finance Minister to consider these suggestions for implementation.

9. The working of the Appellate Tribunal has demonstrated its independence belying the doubts that Dicey entertained over *droit administratif*. This has happened only as a result of non-interference policy in its working, by the executive and accepting it as an impartial judicial appellate forum like any other superior appellate court. While the adjudicating Commissioners and Appellate Commissioners are quasi-judicial Tribunals, the Appellate Tribunal is a purely judicial Tribunal. It goes to the great credit of the Ministry concerned to have recognized the independent functioning of the Tribunal. Not even once there has been, even an indirect interference with the judicial functioning of the Tribunal during my tenure and that is sufficient to put to rest the misapprehensions of Dicey over the impartial functioning of such Tribunals. The responses of the government to the basic needs of the Tribunal for administrative reforms have been very positive at the highest level, and it is hoped that some important

proposals pending in the pipeline will see the light of the day through the mandatory rigmarole of bureaucracy.

10. A judicial institution should function as a safeguard against deviations from the rule of law and expeditiously bring about just and legal solutions to the controversies brought before it. Its success depends upon the quality of persons who exercise the powers conferred on it. A thorough and dedicated outlook with no room for personal interests of those who adorn it will help in sustaining confidence of justice seekers.

11. Underlying the successful functioning of this Tribunal is the profound knowledge and experience of its past and present members, able assistance of the departmental representatives, the lawyers and the other representatives of the parties who appear before it, and the relentless work of the registry. I am sure, this institution will consolidate upon its gains and achieve further heights to sublimely glitter at its Golden Jubilee.

12. I am indeed grateful for the good wishes so very generously showered by overwhelming responses of you all to greet the Tribunal which will enthuse all concerned to work harder for achieving still higher goals while rendering justice in the field of indirect taxation. We look forward eagerly for being blessed by the wisdom and guidance of our esteemed guests of this function. I thank you all for being with us on this historic moment.