

(2021) 01 ATPMLA CK 0001

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-6636/KOL/2019, FPA-PMLA-3332/KOL/2019

Enforcement Directorate, Kolkata Through Assistant Director	APPELLANT
Vs	
M/S. Shree Ganesh Jewellery House(I) Ltd & Ors	RESPONDENT

Date of Decision : 01-01-2021

Acts Referred:

Prevention Of Food Adulteration(Punjab) Rules, 1958 — Rule 3
Prevention Of Money Laundering Act, 2002 — Section 2, 2(1)(c), 2(1)(j), 2(k), 2(1)(K), 5, 5(1), 5(2), 8, 8(2)(b), 8(3), 16, 16(1), 17, 17(1), 18, 18(1), 19, 19(1), 20, 20(1), 21, 21(1), 25, 26, 26(1), 26(4), 26(5), 35(1), 39, 39(2), 40, 41, 42, 45, 48, 48(a), 48(b), 48(c), 49(1), 49(3), 50, 50(2), 51, 51(1), 57, 60, 62, 63, 66, 66(1), 68, 69
Prevention Of Adulteration Act, 1954 — Section 20(i)
Terrorist And Disruptive Activities (Prevention) Act, 1987 — Section 20A(1)
Representation Of Peoples Act, 1951 — Section 81
Code Of Criminal Procedure, 1973 — Section 173, 391

Citation : (2021) 01 ATPMLA CK 0001

Hon'ble Judges : G. C. Mishra, Acting Chairman

Bench : Single Bench

Advocate : N.K. Matta, Akshay Sinha, Pratiksha Sharma, Ankit Acharya, S.A. Saud, Arun Kumar Agarwal, Alok Kumar, Neeraj Grover, Poonam Lau

Judgement

FPA-PMLA-3332/KOL/2019

That the Honâ?ble High Court of Calcutta in the matter of FMAT 343 of 2020 filed by Nilesh Parrekh (Respondent no. 2 herein) passed the following

order on 18.08.2020:-

â??The point involved in this appeal is very short. Hence we have taken up the appeal for hearing dispensing with all formalities.

Mr. Sarkar, learned senior advocate appearing for the appellant, contends that the point of maintainability which goes to the root of the

appeal, had not been considered by the tribunal while passing orders from time

to time directing status quo of the properties of the appellant and extending the same.

The maintainability point is that the appellant, Deputy Director, ED, Kolkata, had no power to file the appeal before the appellate tribunal

in question. He submits that his point had been raised but not dealt with in the said interim orders.

We have heard Mr. Banerjee for the Ed, who apprised us of the gravity of the issues involved in this appeal. We have also learnt that

because of the situation created by the COVID-19 virus, the appeal, although ready for hearing, could not be taken up.

However, we have been shown an order of the tribunal dated 1st July 2020 made during this period, which satisfies us that the tribunal is

functional.

The interim order made on 21st February 2020 records that the appeal would be taken up on 13th July 2020.

We think the interest of justice would be sub-served if we direct the Tribunal to hear out the appeal as expeditiously as possible, preferably

with three months from the date by video link or any other mode. We order accordingly.

The maintainability point shall be formally raised by the appellant by filing a supplementary affidavit before the tribunal by 7th September

2020, serving copies thereof on the respondents. The tribunal shall decide the point of maintainability as a preliminary issue.

There cannot be indefinite continuance of the interim order. It is extended only till 31st December 2020 by which time the appeal should be

disposed of by the tribunal.

With the above directions, the appeal (FMAT No. 343 of 2020) and the connected application (CAN No. 2691 of 2020) are disposed of.â??

The copy of the aforesaid order was received in this Tribunal through e-mail from the respondent on 01.09.2020 and the appeal was pre-poned to

17.09.2020 through physical hearing by cancelling the date 12.11.2020 already fixed then. In the order of Honâ?ble High Court their lordships have

directed to this tribunal to hear the maintainability of the appeal as a preliminary issue. In the said order their lordships have also asked the appellant to

formally raise the point of maintainability before this Tribunal by filing a

supplementary affidavit by 07.09.2020, serving copies thereof on the respondents.

That, on 07.09.2020, Shri Syed Ahmed Saud (S.A. Saud), Id. counsel for the respondent no. 2 (Sh. Nilesh Parekh) has filed an index with a petition

dated 03.09.2020 on 07.09.2020 signed by Shri Nilesh Parekh (Respondent no. 2) under the heading the supplementary affidavit but without sworn

affidavit and also the signature of Shri Nilesh Parekh was not identified. The same defect was pointed out to the Id. counsel for the respondent no. 2

by the Tribunal and the same was cured by filing sworn affidavit dated 03.09.2020 in the Tribunal on 08.12.2020.

During this period, Sh. S.A. Saud, Id. counsel who is also appearing for respondent no. 5 filed miscellaneous application on 12.10.2020 with a prayer to

allow the respondent no. 5 to repair the attached flats which are damaged during Amphan cyclone. Reply to the said application was filed on

26.11.2020 and the application was heard and decided on 08.12.2020.

There are 21 respondents in the present appeal. Beside Mr. Nilesh Parekh (Respondent no. 2), the respondent no. 14 has also raised the issue of

maintainability of the appeal. The respondent no. 2 & 14 made their submissions on the issue of maintainability of the appeal on 08.12.2020. The

arguments on maintainability application continued on dated 10.12.2020, 14.12.2020 and concluded on 16.12.2020 from both sides.

During the course of hearing, during the period September, 2020 to December, 2020, Sh. S.A. Saud, Id. counsel for respondent no. 2 assured this

Tribunal that they have moved the Honâble High Court of Calcutta for extension of stipulated time.

This Tribunal is functioning with only one member and during the Covid-19 period this tribunal has been hearing only the urgent matters such as

hearing on eviction notices etc., issued by ED under PMLA, 2002, demand notices issued, by ED under FEMA, 1999 and by Income Tax Authority

under PBPT Act, 1988 and by Competent Authority under SAFEMA, 1976 and NDPS Act, 1985 through virtual hearing. This Tribunal, at present not

hearing any appeal on merits due to the Covid-19 situation except the matters under the directions of the High Courts.

In the supplementary affidavit, the respondent no. 2 Sh. Nilesh Parekh has raised several points but chosen the arguments restricted to the issue of

maintainability on the ground that the Assistant Director is not competent to file appeal before this Tribunal. Similarly, the respondent no. 14 has also

raised the issue of maintainability of the appeal in his reply, much after passing of the order by the Honâ?ble Court, on the same ground even though

no formal separate application/affidavit has been filed in this regard. The respondent no. 17 has also not filed any application on maintainability but

during the course of hearing submitted that he is adopting the arguments made by respondent nos. 2 & 14.

The Id. counsel for the respondent no. 2 has argued on the point of maintainability of the appeal filed by the Assistant Director, Directorate of

Enforcement. During the course of hearing, he has referred to sections 2(1)(c), 2(1)(j), 2(1)(K), 5(1), 5(2), 8(2)(b), 8(3) and 26(1) of PMLA-2002

(said Act).

During the course of argument, the Id. counsel for the respondent no. 2 submitted that the Assistant Director has no competency to file the appeal and

that section 2(1)(c), 2(1)(j) & 2(1)(k) provides the definition of the â??Assistant Directorâ? and Deputy Director means an Assistant Director and

Deputy Director appointed under sub-section(1) of section 49 of PMLA-2002 respectively and Director or Additional Director or joint Director means

Director or Additional Director or joint Director, as the case may be, appointed under sub-section (1) of section 49 of PMLA-2002. During the course

of hearing it is further submitted that the section 5(1) has specifically provides that any officer not below the rank of Deputy Director can be

authorized to act under section 5(1) and that similar is the case under section 5(2) of the said Act. The Id. counsel has also referred to section 8(2)(b)

of said Act which provides that the Adjudicating Authority shall, after hearing the aggrieved person and the Director or any other officer authorized in

this behalf but under section 26(1) the word â??the Directorâ? is mentioned and that there is no mention of any other officer who may prefer an

appeal before Appellate Tribunal against an order made by the Adjudicating Authority.

It is further submitted by Id. counsel for respondent no. 2 that no other person or authorities other than authorized authority under the Act can prefer

an appeal and that reference has made to the title of the appeal and the affidavit thereto. By referring the same, it is argued that the dispute is whether

an Assistant Director could have been authorized to file an appeal under section 26 (1) the said Act looking at the specific bar to pass an attachment

order under section 5(1) of the said Act and that under the said Act an officer not below the rank of Deputy Director could have been authorized to

sign either provisional attachment order or to file an appeal before this Tribunal because the word used in the section 26(1) is "the Director" and

that whether under the said Act a Special Director or an Additional Director, or a Joint Director can authorize an Assistant Director to pass a

provisional attachment order? and that this goes to the root of the case and that under law, Assistant Director could not have been authorized. He has

referred to reply, to the supplementary affidavit, on behalf of Enforcement Directorate, Kolkata wherein the appellant has stated that the

"Assistant Director was duly authorized on 22.11.2019". By referring to the above the Id. counsel for the respondent no. 2 submitted that this

"duly authorized" could not have been done under law that has been under challenged and the submission made by the appellant in the said reply

to the supplementary affidavit that under section 48 of the PMLA, Assistant Director is also one of the authority, is incorrect particularly when there is

a specific bar under the law with respect to the rank of an officer.

The Id. counsel for the respondent no. 2 has relied on the judgment of M.P. Wakf Board vs Subhan Shah (D) By Lrs. & Ors passed by the

Honorable Supreme Court of India on 31.10.2006 and submitted that the Assistant Director has no power to file the appeal. The relevant portion of

the judgment, relied on, is reproduced below:

"where a statute creates different authorities to exercise their respective functions there under, each of such authority must exercise the

function within the four corners of the statute"

In addition to above, it is also submitted that in the reply filed by the appellant, it is conceded that Assistant Director has no power and that the

Appellant has filed evasive reply to the contentions raised by the respondent no. 2. On the basis of above submissions, it is submitted by the Id. counsel

for the respondent no. 2 that the appeal is not maintainable and liable to be dismissed.

During the course of hearing the Id. counsel for R-2, besides referring to aforesaid provisions of PMLA-2002, submitted that section 26(1) of said Act

specifically provides the word "The Director" and the word "Director" has been defined under section 2(K) of the said Act, according to

which, "Director" or "Additional Director" or "Joint Director" means Director or Additional Director or Joint Director, as the case may

be appointed under section 49(1) of the said Act. The definition in 2(1)(k), the Director does not include Deputy Director or Assistant Director, so the

appeal which is filed by Assistant Director is not maintainable as the Assistant Director is not empowered to file the appeal under the said Act. During

the course of hearing he has referred the section 5(1) of the said Act and submitted that the Director has been empowered to authorize any other

officer not below the rank of Deputy Director for the purpose of that section, whereas that is not so in the case of filing of appeal under section 26 (1)

of the said Act. It was submitted that the Assistant Director is not authorized to file the appeal as in the case of Section 5(1) of the said Act. While

referring the section 5(2) he submitted that in this section also Deputy Director has been the last ranked officer to whom authority has been given to

forward a copy of order to the Adjudicating Authority in a sealed envelope. No such embargo has been prescribed in sections 5(5) & 8(2)(b) of the

said Act.

The respondent no. 14 has filed reply to the appeal on dtd. 10.11.2020 where in the issue of maintainability was taken. Mr. Arun Kumar Agarwal, Id.

counsel for the respondent no. 14, during the course of his arguments, in addition to aforesaid sections referred to sections 17(1), 48, 49, 51 of the said

Act and submitted that the appeal is not maintainable.

The Id. counsel for the respondent no. 14 through his written submission filed on 14. 12.2020 referred to sections 5(1), 16(1), 17(1), 18(1), 19(1), 20(1),

21(1), 26(1), 39(2), 48, 49(1), 49(3), 50(2), 51(1), 66(1) of the PMLA, 2002.

The Id. counsel for the respondent no. 14 submits that the appeal u/s 26(1) of PMLA challenging the order of the Adjudicating Authority has been

filed by the Assistant Director titled as "Enforcement Directorate, Kolkata through Assistant Director". The appeal, applications, affidavits in

support of appeal/applications, Vakalatnama are signed by the Assistant Director. As per section 26(1) of PMLA which provides as follows:

"26 Appeals to Appellate Tribunal-(1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the

Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal??

He further rely on notification vide G.S.R. 441(E) dated 1.7. 2005 that the Central Government in exercise of powers u/s 49(1) of PMLA appointed

the Director of Enforcement under Foreign Exchange Management Act, 1999 as the director to exercise the exclusive powers conferred under

various sections of PMLA including section 26(1) of PMLA.

The Id. counsel for the respondent 14 further submits that from a plain reading of section 26(1) read with above notification no. 441(E), it is crystal

clear that appeal for Enforcement Directorate can be filed only by the Director and no other authority/officer. ??Director? as defined u/s 2(k)

means a ??Director? appointed by the Central Govt. U/s 49(1) of PMLA and that in view of the section 49 of PMLA provides for taking

assistance of authorised representative for presenting case before the Appellate Tribunal and only Central Govt. or Director can authorise (issue

Vakalatnama) and Authorised Representative or any of its offices to present case with respect to appeal before Tribunal. Thus, as provided u/s 26(1)

only Director can file appeal for Directorate of Enforcement and neither Special Director nor the Additional Director nor the Joint Director is

empowered to authorise Assistant Director or any other officer to file the appeal and that Assistant Director has not produced any document which

shows that he is empowered u/s 26(1) of PMLA to prepare, sign & file the present appeal.

The Id. counsel for the respondent no. 14 has relied on the following judgments of Hon??ble Supreme Court:-

1. Union of India vs. B.V. Gopinath (2014) 1 SSC 351- Charge memo issued to Respondent on the allegation that he failed to maintain integrity and

exhibited a conduct which was unbecoming of a Govt. Servant was sought to be declared non est in the eye of the law on the plea that the charge

memo was not approved by the disciplinary authority i.e. Finance Minister who had granted approval only for initiation of departmental proceedings

against him. Dismissing appeal by Union of India, it was held that - Charge memo having not been approved by disciplinary authority i.e. Finance

Minister, was non est in eye of law. In holding so, Hon??ble Court observed with approved following in para 43-44:

43 Accepting the submission of Ms. Indira Jaising would run counter to the well known maxim delegates non protest delegare (or

delegari). The principle is summed up in Judicial Review of Administrative Action De Smith, Woolf and Jowell (Fifth Edition) as

follow:-

The rule against delegation

A discretionary power must, in general, be exercised only by the authority to which it has been committed. It is a well known principle of law

that when a power has been confided to a person in circumstances indicating that trust is being placed in his individual judgment and

discretion, he must exercise that power personally unless he has been expressly empowered to delegate it to another.

The same principle has been described in Administrative Law H.W.R. Wade & C.F. Forsyth (Ninth Edition), Chapter 10, as follows:-

Inalienable discretionary power

An element which is essential to the lawful exercise of power is that it should be exercised by the authority upon whom it is conferred, and

by no one else. The principle is strictly applied, when where it causes administrative inconvenience, except in cases where it may reasonably

be inferred that the power was intended to be delegable. Normally the courts are rigorous in requiring the power to be exercised by the

precise person or body stated in the statute, and in condemning as ultra virus action taken by agents, sub-committees or delegates, however

expressly authorized by the authority endowed with the power.

44. The principle has been given recognition in Sahni Silk Mills (P.) Ltd.'s case (supra), wherein it was held as under:-

6. By now it is almost settled that the legislature can permit any statutory authority to delegate its power to any other authority, of

course, after the policy has been indicated in the statute itself within the framework of which such delegate (sic) is to exercise the power.

The real problem or the controversy arises when there is a sub-delegation. It is said that when Parliament has specifically appointed

authority to discharge a function, it cannot be readily presumed that it had intended that its delegate should be free to empower another

person or body to act in its place.

Attention is also invited to submissions in response to plea by ASG in para 16 that it is in the interest of good administration to interpret said

office order in the manner as contended by Ld. ASG since there are more than 500 enquiries that have been initiated in the aforesaid

manner.â??, recorded in para 25 of the order as follow:

â??25. Mr. Patwalia countered the submission of the learned ASG that it will not be in the interest of good administration to drop the

inquiries which are already going on if the charge-sheets issued in such inquiries are required to be approved by the Finance Minister. In

this context, it was submitted that such a contention has already been rejected by this court in Coal India Ltd. v. Saroj Kumar Mishra

[2007] 9 SCC 625. Our attention was also drawn to the following excerpt from the said case.

â??The floodgate argument also does not appeal to us. The same appears to be an argument of desperation. Only because, there is a

possibility of floodgate litigation, a valuable right of a citizen cannot be permitted to be taken away. This court is bound to determine the

respective rights of the parties.â??â??

ii. Sidharth Sarwagi v Board of Trustees for Port of Kolkata and Ors (2014) 16 SCC 24-8 In this case, after termination of lease by the Chairman of

Board of Kolkata ports, ejectment notices issued by Land Manager was challenged on the plea that he is not competent to do so, and the same being

without jurisdiction. Power of termination of lease was delegated by Board of the Kolkata Port in the Chairman and he was also authorised to issue

ejectment notices. The Chairman vide an office order delegated issue of ejectment notices in subordinate officers in respect of leases determined by

him. Honâ??ble Supreme Court rejected the appeal after noting that â??4. Regarding delegation of non-legislative/administrative powers on a person or

a body to do certain things, whether the delegate himself is to perform or a body to do certain things, whether the delegate himself is to perform such

functions or whether after taking decision as per the terms of delegation, the said agency can authorize the implementation of the same on somebody

else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision taken in the

process, is a matter of procedure. The Legislature may, after laying down the

legislative policy, confer discretion on an administrative agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy. So long as the essential functions of

decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by the primary delegate.

It is not necessary that the primary delegate himself should perform the ministerial acts as well . In furtherance of the implementation of the decision

already taken by the primary delegate as per the delegation, ministerial or clerical tasks may be performed by authorized officers.â??

Honâ?ble Supreme Court also observed thatâ?..... In construing the scope and extent of delegated power, the difference between the essential and

non-essential functions of the delegate should be borne in mind. While there cannot be sub-delegation of any essential functions, in order to achieve

the intended object of the delegation the non-essential functions can be sub-delegated to be performed under the authority and supervision of the

delegate.â??

iii. A.K. Roy v State of Punjab (1986) 4 SCC 3 2â?" the power to initiate prosecution for offence under section 20 (i) of the Prevention of

Adulteration Act, 1954 was conferred on the State Government. Under Rule 3 of the Prevention of Food Adulteration(Punjab) Rules, 1958, the state

Govt. delegated the power to the Food Authority. By issuing a notification, the Food Authority further delegated the said power to Food Inspector,

who prosecuted the accused for offences under the Act. Holding the said notification ultra virus, the Supreme Court observed:â?The terms of section

20 (i) of the Act do not postulate further delegation by the person so authorisedâ? and therefore, the complaint filed by Food Inspector was not

maintainable.

iv. Anirudhsinghji vs The State of Gujarat (1995) 5 SCC 302- The power to grant sanction/approval u/s 20A(1) of TADA for recording of any

information about commission of an offence under the Act is conferred on District Superintendent of Police (DSP). A specific point was taken by the

accused that that prior approval, as required by section 20A(1)of TADA, was not taken from DSP. This section was introduced to safeguard the

citizen from vexatious prosecution under TADA. Honâ?ble Supreme Court noted that â??The DSP did not give any prior approval on his own to

record any information about the commission of any offence under TADA. On the contrary, he made a report to the Additional Chief Secretary and

asked for permission to proceed under TADA. â??Allowing the appeal, it held that â??This is a case of power conferred upon one authority being

really exercised by another. If a statutory authority has been vested with jurisdiction, he has to exercise it according to its own discretion. If the

discretion is exercised under the direction or in compliance with some higher authorityâ??s instruction, then it will be a case of failure to exercise

discretion altogether. In other words, the discretion vested in the DSP in this case by Section 20A (1) was not exercised by the DSP at all.â??

v. Dhahdda Exports v Income Tax Officer Rajasthan High Court (2015) 58 taxmann. Com 176 and Yum Restaurants Asia Pte Ltd. vs. Deputy

Director of Income-tax- Delhi High [2018] 99 taxmann.com 423 relied.

On the aforesaid grounds and citing/replying aforesaid judgments, the Id. counsel for the respondent no. 14 sought dismissal of appeal on non-maintainability.

The Id. counsel appearing for respondent no. 17 has adopted the submissions made on behalf of Respondent no. 2 and 14.

On the other hand Id. counsel for the appellant has objected the prayer of the Id. counsels for the respondent nos. 2 & 14 and submitted that the

supplementary affidavit filed by respondent no. 2 is a wrong statement. The appeal has been filed by the Directorate of Enforcement not by the

Assistant Director. The appeal has been filed by Directorate through Assistant Director. He also argued that the as per section 26 (1) of the said Act,

the Enforcement Directorate is the aggrieved party. In support of his contention he refers the para 1 of page 6 of the appeal paper book. The same is

read as under:

â??1. That the appellant Department is seriously aggrieved by the erroneous order dated 09.01.2019 passed by the Id. Adjudicating Authority without

application of judicial mind in O.C. No. 1146/2017 in PAO dated 16.04.2019, whereby the properties of the respondents provisionally attached, were

held to be not involved in money laundering and further not confirming the PAO. A certified copy of the order dated 09.10.2019 is annexed herewith

as Annexure-1, which was received on 14.10.2019.â??

He further submits that the appeal was filed by Enforcement Directorate through

the Assistant Director and that the Competent Authority (Special Director) of the Enforcement Directorate, Kolkata, has authorized the Assistant Director to file the appeal before this Tribunal. He further submitted that the proceedings under section 26 of Prevention of Money Laundering Act-2002 is with regard to appeals to the Appellate Tribunal which provides that the Director or any person aggrieved by an order made by the adjudicating authority under this Act may prefer an appeal before this Tribunal.

He further objected to the reply to the appeal filed by the respondent no. 14 that the respondent no. 14 is an absconded person and respondent no. 14 had undertaken before the Honâ?ble High Court that he will be appearing in January, 2020 but he has not appeared. Non bailable warrant has been issued against him and the reply to the appeal is filed through his counsel without any verification, without any supporting affidavit. However, in his reply also respondent no. 14 has made a misstatement. He has referred to para no. 2 of the reply to the appeal that the Assistant Director has filed the present appeal which is wrong because the appeal has been filed by the Enforcement Directorate, Kolkata through Assistant Director and submitted that this is a misstatement by the respondent no. 14. The averment made in para 2 of the reply is qua appeal.

The Id. counsel for the appellant has submitted that the filing of appeal is a procedural aspect only. The Assistant Director has not taken any order on rights and liabilities or anything of any person. This is an appeal against the impugned order and the appeal is a substantive right of the Department and that after due application of mind decision was taken by the Competent Authority and the appeal has been filed.

During the course of hearing, a statement has been made by the Id. counsel for the appellant that Enforcement Directorate has taken a decision to file the present appeal by the Joint Director (the zonal head) with the approval of the Special Director (the Regional Head) and he referred to the copy of the internal note dated 22.11.2019 of the Department to show that the decision has been taken at the level of Special Director (ER) to depute the Assistant Director to file the appeal and stay application as per approved draft. The filing of appeal is only a procedural matter and the Assistant Director has been authorised to file the appeal and that there is no illegality in

filing the appeal. He has referred sections 2(1)(k), 48, 49, 51(1) 35 read with section 26(1) of the PMLA, 2002.

The Id. counsel for the appellant has referred to the Authentication Rule of Government of India notified on 16.02.2002 which deals with authorities

who may authenticate orders and other instruments. He has particularly referred to page no. 20 of said rules which relates to M/o Finance, D/o

Revenue wherein at Sr. no. (1) in the matter of Enforcement Directorate, Assistant Director is one of the officer who is authorized to authenticate the orders and other instruments.

He has relied on following judgments during the course of arguments:-

â??

In Union of India Vs Amarjeet Singh Bhalla, the Honâ??ble High Court of Delhi held that:

â??Para 8. As far as the present case is concerned, the cause title reads ""Union of India through Directorate of Enforcement"" as appellant. The

memorandum of appeal is supported by the affidavit of Shri S.K. Poddar, Assistant Director, Enforcement Directorate. Nevertheless, unlike the

appeal before the High Court in Mohtesham Mohd. Ismail which was not filed by the Enforcement Directorate on behalf of the Central Government,

it is plain that the present appeal has been filed by the Central Government represented by the Directorate of Enforcement. Merely because it is filed

through the Enforcement Directorate, it cannot be said that the Central Government has itself not filed the appeal. The decision in Mohtesham Mohd.

Ismail does not suggest that that on the facts of the present case, the appeal is not maintainable at the behest of the Central Government.

Para 9. The preliminary objection as to the maintainability of the appeal is accordingly overruled.â??

The Id. counsel for the respondent relied on internal note dt. 22.11.2019 and submits that the officer Sh. Sudersan Ghosh, AD & I.O. of the case

authorized to file the appeal and stay application as per approved draft and he may be allowed to visit New Delhi for the purpose.

The note was approved up to Special Director and that the decision was taken by the Enforcement Directorate and subsequently, an authorized

officer i.e. Assistant Director is deputed to file the appeal before this Tribunal.

Accordingly, he has relied upon the Judgment passed by the Honâ?ble Supreme Court in the matter of Sidhartha Sarawgi Vs Board of Trustee for the

Port Trust of Kolkata & Ors., wherein the Honâ?ble Supreme Court of India has held, regarding delegation of non legislative administrative power,

that:

Para5:- Regarding delegation of non-legislative/administrative powers on a person or a body to do certain things, whether the delegate himself is to

perform such functions or whether after taking decision as per the terms of the delegation, the said agency can authorize the implementation of the

same on somebody else, is the question to be considered. Once the power is conferred, after exercising the said power, how to implement the decision

taken in the process, is a matter of procedure. The Legislature may, after laying down the legislative policy, confer discretion on an administrative

agency as to the execution of the policy and leave it to the agency to work out the details within the framework of that policy[3]. So long as the

essential functions of decision making is performed by the delegate, the burden of performing the ancillary and clerical task need not be shouldered by

the primary delegate. It is not necessary that the primary delegate himself should perform the ministerial acts as well. In furtherance of the

implementation of the decision already taken by the primary delegate as per the delegation, ministerial or clerical tasks may be performed by

authorized officers. The complexity of modern day administration and the expansion of functions of the State to the economic and social spheres have

made it necessary that the Legislature gives wide powers to various authorities when the situation requires it. Todayâ??s governmental functions are

a lot more complex and the need for delegation of powers has become more compelling. It cannot be expected that the head of the administrative

body performs each and every task himself.

â??Para6. The issue was considered by this Court in Jamal Uddin Ahmad v. Abu Saleh Najmuddin and Another [4] in the context of the procedure

for filing of the election petitions under Section 81 of the Representation of Peoples Act, 1951. It was held that the ministerial or administrative

functions of the authority on whom the powers are conferred by the statute can be exercised by the authorized officers. It was held that:

13. The functions discharged by a High Court can be divided broadly into judicial

and administrative functions. The judicial functions are to be discharged essentially by the Judges as per the Rules of the Court and cannot be delegated. However, administrative functions need not necessarily be discharged by the Judges by themselves, whether individually or collectively or in a group of two or more, and may be delegated or entrusted by authorization to subordinates unless there be some rule of law restraining such delegation or authorisation. Every High Court consists of some administrative and ministerial staff which is as much a part of the High Court as an institution and is meant to be entrusted with the responsibility of discharging administrative and ministerial functions. There can be delegation as also there can be authorization in favour of the Registry and the officials therein by empowering or entrusting them with authority or by permitting a few things to be done by them for and on behalf of the Court so as to aid the Judges in discharge of their judicial functioning. Authorization may take the form of formal conferral or sanction or maybe by way of approval or countenance. Such delegation or authorization is not a matter of mere convenience but a necessity at times. The Judges are already overburdened with the task of performing judicial functions and the constraints on their time and energy are so demanding that it is in public interest to allow them to devote time and energy as much as possible in discharging their judicial functions, relieving them of the need for diverting their limited resources of time and energy to such administrative or ministerial functions, which, on any principle of propriety, logic, or necessity are not required necessarily to be performed by the Judges. Receiving a cause or a document and making it presentable to a Judge for the purpose of hearing or trial and many a functions post- decision, which functions are administrative and ministerial in nature, can be and are generally entrusted or made over to be discharged by the staff of the High Court, often by making a provision in the Rules or under the orders of the Chief Justice or by issuing practice directions, and at times, in the absence of rules, by sheer practice. The practice gathers the strength of law and the older the practice the greater is the strength??

â??Para 16. Practical necessities or exigencies of administration require that the

decision making authority who has been conferred with statutory power, be able to delegate tasks when the situation so requires. Thus, the maxim delegate us non potest delegate, gives way in the performance of administrative or ministerial tasks by subordinate authorities in furtherance of the exercise of the delegated power by an authority??

Para17. The power that is delegated to the Chairman as per Resolution No. 82 is the power to terminate a lease. The decision to terminate has been taken by the Chairman only and there is no dispute in that regard. In implementation of the decision thus taken by the Chairman to terminate the leases, the Chairman has authorized the Land Manager to issue the ejectment notices. The issuance of such notices is a mere ministerial act for the implementation of a decision already taken by the Chairman as delegated by the Board. The Chairman having duly authorized the Land Manager in that regard, it cannot be said that the ejectment notice issued by the Land Manager is without jurisdiction. It is not a case of sub-delegation. It is merely a ministerial exercise of issuance of a notice in implementation of the decision, as per the specific authorization in that regard.

The Id. counsel for the appellant submitted that the filing of the appeal is a procedural and ministerial aspect.

He has rebutted the judgment cited by the Id. counsel for the respondent no. 2 M.P. Wakf Board vs Subhan Shah (D) By Lrs. & Ors passed by the

Honâ?ble Supreme Court of India that we are before the Appellant Tribunal and the Tribunal has power to exercise its power under section 35(1), it is

very clear that in most of the cases other cited those provisions so unlike other civil court this tribunal shall not bound by any procedure by the C.P.C.

The Appellate Tribunal shall not bound by any procedure laid by the C.P.C. 1908 but shall be guided by the principle of natural justice and subject to

other provisions of this Act. The appellate Tribunal shall have power to regulate to its own procedure. So the Tribunal has its own power and if any

point of time this court feel that there is some irregularities/mistake, the tribunal has power to rectify the mistake and hear the appeal. In this regard

the Id. counsel has relied upon the judgment passed by Honâ?ble Supreme Court Varun Phawa vs. Renu Chaudhary. of India, wherein the Honâ?ble

Court has held that:-

â??Para 8. The plaint is not properly drafted in as much as in the memo of

parties, the Plaintiff is described as Varun Pahwa through Director of Siddharth Garments Pvt. Ltd. though it should have been Siddharth Garments Pvt. Ltd. through its Director Varun Pahwa. Thus, it is a case of mistake of the counsel, may be on account of lack of understanding as to how a Private Limited Company is to sue in a suit for recovery of the amount advanced??

Para 10. In *Uday Shankar Triyar v. Ram Kalewar Prasad Singh and Another*⁵, this Court held that procedural defects and irregularities which are curable should not be allowed to defeat substantive rights or to cause injustice. Procedure should never be made a tool to deny justice or perpetuate injustice by any oppressive or punitive use. The Court held as under: -

He further referred to Section 68 of the said Act which is regarding the provision

that- Notice, etc., not to be invalid on certain grounds.

Which is reproduced below:-

â??68:- No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made

or issued or taken in pursuance of any of the provisions of this Act shall be invalid, or shall be deemed to be invalid merely by reason of any mistake,

defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in

substance and effect in conformity with or according to the intent and purpose of this Act.â??

In view of the above section, he further submits that, as per this section it is very clear if there is mistake on the part of the concerned officer to

mention the name in the cause title, then that can be no ground to invalidate the proceedings under section 26 of PMLA.

He Further read the section as mentioned below submits that As per section 2(1) (c) read with section 48 of the said Act, the Assistant Director is an

authorized officer and if sections 48 and 49 of the said Act are read collectively, it comes that the Assistant Director is a responsible and authorised

person to act on behalf of Enforcement Directorate. In this regard he has referred judgment dated 13.10.2020 passed by Honâ?ble Division Bench of

Honâ?ble Supreme Court in the following matter:

â??In Sugandhi (Dead) by Lrs. vs P. Rajkumar Rep. By Power Agent, the Honâ?ble Supreme Court of India held that:

â??Para9. It is often said that procedure is the handmaid of justice. Procedural and technical hurdles shall not be allowed to come in the way of the

court while doing substantial justice. If the procedural violation does not seriously cause prejudice to the adversary party, courts must lean towards

doing substantial justice rather than relying upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey

towards truth which is the foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute.

Therefore, the court should take a lenient view when an application is made for production of the documents under sub?rule (3)â??

During the course of hearing, the Id. counsel for the appellant submitted that the respondents have raised the maintainability issue at a belated stage so

that cannot be considered as the Tribunal has already taken judicial notice of the appeal. In this regard he has relied on the following judgment dated

27.10.2020 passed by Honâ??ble Supreme Court in the following matter:-

â??In M/S L &T Housing Finance Limited vs M/S Trishul Developers, the Honâ??ble Supreme Court of India held that:

â??Para 19. In the facts and circumstances, when the action has been taken by the competent authority as per the procedure prescribed by law and

the person affected has a knowledge leaving no ambiguity or confusion in initiating proceedings under the provisions of the SARFAESI Act by the

secured creditor, in our considered view, such action taken thereof cannot be held to be bad in law merely on raising a trivial objection which has no

legs to stand unless the person is able to show any substantial prejudice being caused on account of the procedural lapse as prescribed under the Act

or the rules framed there under still with a caveat that it always depends upon the facts of each case to decipher the nature of the procedural lapse

being complained of and the resultant prejudiced if any, being caused and there cannot be a straitjacket formula which can be uniformly followed in all

the transactions.â??

If at all there is any mistake on the part of the concerned officer, that cannot be taken against me and the appeal should be heard on merits.

He also referred the judgment passed by Honâ??ble Supreme Court of India in the matter of *Sate of Gujarat Vs. Mohanlal Jitamajiporwal & Anr.*

1987 AIR 1321, 1987 SCR(2) 677

â??To deny the opportunity to remove the formal defect was to abort a case against an alleged economic offender. Ends of justice are not

satisfied only when the accused in a criminal case is acquitted. The Community acting through the State and the Public Prosecutor is also

entitled to justice. The cause of the Community deserves equal treatment at the hands of the court in the discharge of its judicial functions.

The Community or the State is not a person-non-grata whose cause may be treated with disdain. The entire Community is aggrieved if the

economic offenders who ruin the economy of the State are not brought to books. A murder may be committed in the heat of moment upon

passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit

regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of

forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from

the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the National Economy and National

Interest. The High Court was therefore altogether unjustified in rejecting the application made by the learned Assistant Public Prosecutor

invoking the powers of the Court under Section 391 of the CrPC. We are of the opinion that the application should have been granted in

the facts and circumstances of the case with the end in view to do full and true justice. The application made by the learned Assistant Public

Prosecutor is therefore granted. The High Court will issue appropriate directions for the recording of the evidence to prove the report of

the Mint Master under Section 391 Cr.P.C. when the matter goes back to High Court and is listed for directions. The appeal is therefore

allowed. The order of acquittal is set aside. The matter is remitted to the High Court for proceeding further in accordance with law in the

light of the above said directions.â??

On the basis of above, the Id. counsel for the appellant submits that that ED also need justice and this Tribunal has ample power u/s 35(1) of the

PMLA-2002 and that if alternatively it is found that there is some mistake in filing the appeal and this mistake can be rectified and the ED be given

opportunity to place its case on merit.

He has cited another document which is a communication received from ED, Kolkata Zone nominating him to defend the PAO in this matter of

Ganesh Jewellers and Ors. before the Adjudicating Authority and Appellate Tribunal.

By citing the aforesaid communication the Id. counsel for the respondent wanted to submit that the Director is aware of the proceedings before

Adjudicating Authority and the Appellate Tribunal.

On the basis of above arguments and judgments referred by the Id. counsel for the appellant prayed that the appeal should be allowed for hearing on

merits and alternatively if there is mistake in filing the appeal, the same be allowed to be rectified.

The Id. counsel for the respondent no. 14 in reply to the submission made by the appellant submits that the Id. counsel for the appellant has argued

mainly on two main issues, one limb of argument is that the decision for filing the appeal has been taken by the Competent Authority i.e. Joint Director

with the approval of Special Director and the second limb of argument is that the Assistant Director has been authorized to file the appeal which is a

ministerial/ procedural in nature and even if there is some error in the title of the appeal it is curable defect which can be rectified.

The rebuttal the arguments made by the Id. counsel for the respondent no. 14 that the Joint Director and Special Director are not the Competent

Authority in accordance with law and section 26(1) clearly provides that the word 'The Director' who is the competent authority is to take a

decision after application of mind as to whether he is aggrieved and whether any appeal is to be filed or not, so admittedly, the decision of filing the

appeal has not been taken by the Competent Authority i.e. 'the Director'. He has reiterated his arguments by drawing attention to the provisions

of section 51 of PMLA and notification dated 01.07.2005 vide G.S.R 441(E). He has drawn to this notification by giving thrust to the fact that the

exclusive power to the Director of Enforcement Directorate given under the PMLA are to be exercised by him only not by any other authority. In the

event any other authority has exercised his power than that would be contrary to law. By referring to para 6 of his written submission, he submitted

that the director can neither sub-delegate this essential function of decision making involving application of mind nor he can abdicate the statutory duty

u/s 26(1), entrusted by the legislature.

By referring to section 17(1) pre amended and post amended provisions the Id. counsel for the respondent no. 14 has submitted the following:

'From plain reading of original provision of section 17(1), it is clear that the Director alone was conferred power to form the belief and authorize

any officer subordinate to him to conduct search. As neither legislature conferred power of formation of belief u/s 17(1) on Additional/Joint/ Deputy

Director nor the Director was empowered to sub-delegate the power of formation of belief u/s 17(1), this led to administrative difficulty of exercise of

power of search u/s 17 of PMLA. Appreciating the above position of law u/s 17 of PMLA, to overcome the difficulty, section 17(1) of PMLA was

amended w.e.f. 1.6.2009 by empowering the Director to authorize any officer not below the rank of Deputy Director to exercise power of formation

of belief and authorization of subordinate officer to conduct search u/s 17 of PMLA.

13. The phraseology employed by the legislature in pre-amended (before 1.06.2009) section 17(1) was same as that of section 26(1) for conferring

power by using the phrase "The Director". Whereas section 17(1) was amended to come over the administrative difficulties but there was no

amendment in section 26(1). Thus, for preferring appeal u/s 26(1), only the Director is the competent authority to exercise exclusive jurisdictional

power involving essential function of decision making after application of mind on case records including impugned order to prefer appeal before

Tribunal and it is crystal clear that he is not empowered to sub-delegate this essential decision making function to any other authority subordinate to

him.

To substantiate his submission he has referred the judgments already noted above.

He further submits that if the appeal is allowed then it hampers my rights in view of the judgment passed by the Hon^{ble} Supreme Court of India in

the matter of Union of India vs. B.V. Gopinath. As regard the submission made by Id. counsel for appellant that is the clerical error and all those

things are not relevant because the decision has not been taken by the competent Authority and appeal is non est, invalid and void ab- initio. On the

above grounds the appeal should be dismissed.

Heard the Id. counsels for the appellant, respondent nos. 2 & 14 and the Id. counsel for the respondent no. 17 did not argue the matter but has adopted

the arguments made by Id. counsel for the respondent nos. 2 & 14 on the issue of maintainability of the appeal. Peruse the relevant materials placed

on record from both the sides and also gone through the judgments cited and relied on by them.

It is seen from the order of Hon^{ble} High Court, Calcutta, dated 18.08.2020, that the respondent no. 2 had raised the maintainability point that the

appellant, Deputy Director ED, Kolkata had no power to file the appeal before the Appellate Tribunal in question. The Id. counsel for the respondent

no. 2 has chosen to restrict his submissions that the Assistant Director, ED is not

competent to file the appeal under 26(1) of the said Act as such the appeal is not maintainable. During the course of argument, the Id. counsel for the respondent no. 2 has referred to sections 2(1)(c), 2(1)(j), 2(1)(K), 5(1), second proviso to section 5(1), 5(2), 8(2)(b) & 26(1) of the said Act and submitted that an appeal u/s 26(1) can not be filed by an officer not below the rank of the Deputy Director. During the course of argument Sh. S.A. Saud, Id. counsel for the respondent no. 2 by referring to para 2 of the affidavit to the memo of appeal submitted that the Assistant Director who has filed the appeal ought not to have stated that he is competent to file the affidavit. He has further submitted that in view of the specific bar u/s 26 (1) he is not competent to file the affidavit appended to memo of appeal.

In furtherance to the aforesaid submission, the Id. counsel for the respondent nos. 2 relied on the judgment passed by Honâ?ble Supreme Court in the matter of M.P. Wakf Board vs Subhan Shah (D) By Lrs. & Ors passed by the Honâ?ble Supreme Court of India on 31.10.2006 by relying on this judgment it is submitted that the authority which is empowered to exercise to certain functions that authority must exercise the functions within four corners of the statute. By citing the aforesaid judgment, it is submitted that there is a specific bar u/s 26(1) of the said Act according to which the Assistant Director is not empowered to file the appeal.

â??where a statute creates different authorities to exercise their respective functions there under, each of such authority must exercise the function within the four corners of the statuteâ??

The aforesaid judgment of M.P. Wakf Board vs. Shubam Shah (D) by Lrs. is not applicable in the present facts and circumstance of the case because the Tribunal constituted by the State of Madhya Pradesh had passed an order framing a scheme for managing the affairs of the Dargaha, which came under challenge before the Honâ?ble High Court unsuccessfully and the matter went to Honâ?ble Supreme Court wherein it was held that the Tribunal could not usurp the jurisdiction of the Board and in that context, the aforesaid observation was made by Honâ?ble Supreme Court.

The fact and law of maintainability in the present case is totally different hence this judgment cannot be made applicable. There is no challenge to the power and jurisdiction of this Appellate Tribunal.

In addition to the argument submitted by Id. counsel for Respondent no. 2, the

Id. counsel for the respondent no. 14 referred to section 48, 49, 51(1) of the said Act and also referred to notification vide G.S.R no. 441(E) dated 01.07.2005, which relates to appointment of Director under section 49(1) of the said Act by the Central Government w.e.f. 01.07.2005 to exercise the exclusive powers under sections 5, 8, 16, 17, 18, 19, 20, 21, 26(1), 45, 50, 57, 60, 62, & 63 of the said Act and shall also concurrently exercise the powers conferred by sections 26(1), (4), (5), 39, 40, 41, 42, 48, 49, 66 and 69 of the said Act and submitted that the Director is not only to take a decision to file the appeal but also to file the appeal himself and no other authorities are to empowered either to take a decision to file the appeal or to file same. To substantiate his points, he relied on the judgment mentioned above.

On the other hand, the main argument of the respondent is that the appeal has been filed by the Enforcement Directorate through Assistant Director as the Enforcement Directorate itself is seriously aggrieved with the impugned order dated 09.10.2019. In this regard he has referred to the cause title and the first para of the appeal which read as follows:-

1. The appellant Department is seriously aggrieved by the erroneous order dated 09.10.2019 passed by the Id. Adjudicating Authority without application of judicial mind in O.C. no. 1146/2019 in P.A.O. dated 16.04.2019, whereby the properties of the respondents provisionally attached, where held to be not involved in money laundering and further not confirming the P.A.O.

The Id. counsel for the appellant has made alternative submission to allow the appellant to rectify the mistake, if it is held that the filing of appeal by the Assistant Director is not maintainable.

While making the aforesaid submissions, he relied on the judgment mentioned above.

The references have been made by the parties to the following sections of the said Act which are reproduced below:-

2(1)(c) "Assistant Director" means an Assistant Director appointed under sub-section (1) of Section 49;

2(1)(j) "Deputy Director" means a Deputy Director appointed under sub-section (1) of Section 49;

2(1)(k) "Director" or "Additional Director" or "Joint Director" means a Director or Additional Director or Joint Director, as the case may be,

appointed under sub-section (1) of section 49;

5(1) Attachment of Property involved in money-laundering.- where the Director or any other officer not below the rank of Deputy Director authorised

by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in

his possession, that-

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating

to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding

one hundred and eighty days from the date of the order, in such manner as may be prescribed;

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a magistrate

under section 173 of the Code of Criminal, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned

in that schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has

been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in [first proviso], any property of any person may be attached under this section if the

Director or any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director

authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material

in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the

property is likely to frustrate any proceeding under this Act.

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this

section is stayed by the High Court, shall be excluded and further period not exceeding thirty days from the date of order of vacation of such stay

order shall be counted.]

5(2). The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed. 5(5). The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

8(2)(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and.

26(1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this

Act, may prefer an appeal to the Appellate Tribunal.

48. Authorities under the Act.—There shall be the following classes of authorities for the purposes of this Act, namely:-

(a) Director or Additional Director or Joint Director,

(b) Deputy Director,

(c) Assistant Director, and

(d) such other class of officers as may be appointed for the purposes of this Act.

49. Appointment and powers of authorities and other officers.—

(1) The Central Government may appoint such persons as it thinks fit to be authorities for the purposes of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director or an Additional Director or a Joint

Director or a Deputy Director or an Assistant Director appointed under that sub-section to appoint other authorities below the rank of an Assistant

Director.

(3) Subject to such conditions and limitations as the Central Government may impose, an authority may exercise the powers and discharge the duties

conferred or imposed on it under this Act.

51(1) Jurisdiction of authorities.—

(1) The authorities shall exercise all or any of the powers and perform all or any

of the functions conferred on, or, assigned, as the case may be, to such authorities by or under this Act or the rules framed there under in accordance with such directions as the Central Government may issue for the exercise of powers and performance of the functions by all or any of the authorities.â??

68:- No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of this Act shall be Â invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other proceeding is in substance and effect in conformity with or according to the intent and purpose of this Act.

Section 2 of the said Act deals with the definitions. Section 2(1)(c) has defined the word â??the Assistant Directorâ? whereas section 2(1)(j) defined

the word â??Deputy Directorâ? and section 2(1)(k) has defined the words â?? Director, Additional Director and Joint Director. They are being

defined as the authorities appointed under sub-section 1 of 49 of the said Act. Section 48 of the said Act specified the classes of authorities for the

purpose of the PMLA, 2002(the said Act.). The Director or Additional Director or Joint Director have been put under the same class in sub clause (a)

whereas the Deputy Director, and Assistant Director have been placed under sub-clause (b) and (c) of the section 48 of the said Act. If the section

2(1)(k) is read with section 48(a) of the said Act, it is clear that the Director, Additional Director and Joint Director are put in the same classes of

authority for the purpose of this Act, so the decision taken by the Joint Director with the approval of the Special Director (Special Director is higher in

rank than Additional Director in the hierarchy of the Enforcement Directorate) to file appeal is not contrary to the provisions of PMLA, 2002. It is not

that for each and every case to file appeal before this Appellate Tribunal the Director who is the head of Enforcement Directorate is to take a

decision to file appeal. If any of the officers in the same class of officer (section 48(a) of the said Act) has taken a decision to file an appeal then in

my considered view there is no illegality.

In this particular appeal, it is the department who is aggrieved and who has filed

the appeal. Since, the decision has been taken at the level of Special Director, Kolkata, that the Assistant Director/I.O. to file the appeal, it is nothing but a ministerial work to be performed by the Assistant Director. The Id. counsel for the respondent no. 2 has raised strong objection to the statement mentioned in para 2 of In the Affidavit to the memo of appeal and submitted that Assistant Director is not competent. I do not agree with the aforesaid submission of the Id. counsel for the respondent no. 2 on the ground that the Assistant Director, Mr. Sudarshan Ghosh, who is the investigating officer of this case has been duly authorized with the approval of the authority of the level of Special Director to file the appeal vide internal note dated 22.11.2019. The Id. counsel for the respondent nos 2 & 14 have not disputed the genuineness of the said internal note. The only dispute they have raised is that the Assistant Director ought not to have been authorized to file the appeal. Right from beginning from the stage of the registration of case till its logical conclusion it is the Enforcement Directorate, the investigating agency under PMLA, is involved. So, the Enforcement Directorate is the aggrieved party if any order is passed against it in any adjudication, appeal or prosecution proceedings under PMLA, 2002, so challenging the orders passed by any of the aforesaid proceedings against it, the Enforcement Directorate is the first and foremost aggrieved and competent party to challenge such order. Since, the present appeal is filed by the Enforcement Directorate, merely because the present appeal is presented by an Assistant Director that to who is authorized by an officer of the rank of Special Director, the head of the Regional Office of the Enforcement Directorate, it cannot be said that the appeal is not maintainable. The Id. counsels for the respondents have referred to section such as second proviso to section 5(1), 5(2), 8(2)(b), 17(1) etc. to justify that the Assistant Director has not been validly authorized to file an appeal. In the given facts and circumstances where the appeal has been filed by the Enforcement Directorate, the aggrieved party, I do not find any justification in the submission made by the Id. counsel for the respondent nos. 2 & 14. In this regard the judgment in the matter of Union of India Vs Amarjeet Singh Bhalla, the Honâ??ble High Court of Delhi has held that:

â??

â??Para 8. As far as the present case is concerned, the cause title reads ""Union

of India through Directorate of Enforcement"" as appellant. The memorandum of appeal is supported by the affidavit of Shri S.K. Poddar, Assistant Director, Enforcement Directorate. Nevertheless, unlike the appeal before the High Court in Mohtesham Mohd. Ismail which was not filed by the Enforcement Directorate on behalf of the Central Government, it is plain that the present appeal has been filed by the Central Government represented by the Directorate of Enforcement. Merely because it is filed through the Enforcement Directorate, it cannot be said that the Central Government has itself not filed the appeal. The decision in Mohtesham Mohd. Ismail does not suggest that that on the facts of the present case, the appeal is not maintainable at the behest of the Central Government.

Para 9. The preliminary objection as to the maintainability of the appeal is accordingly overruled.â??

In the aforesaid case, his lordship of Honâ??ble High Court of Delhi has dealt with an issue akin to the present issue of maintainability. In the aforesaid

case, the Enforcement Directorate had filed the appeal on behalf of the Central Government before the Honâ??ble High Court and the memorandum of

appeal in the appeal before the Honâ??ble High Court was supported by the affidavit of Shri S.K. Poddar, who was an Assistant Director,

Enforcement Directorate. In the aforesaid matter the issue of maintainability was raised as the preliminary issue because the Union of India filed the

appeal through Enforcement Directorate and the memo of appeal was signed by an officer in the rank of Assistant Director, as in the present case.

The appeal cannot be dismissed being not maintainable on the ground that an officer of the rank Assistant Director has presented the appeal under his

signature with an affidavit sworn by him.

The authentication rule cited by the appellant is not applicable as the appeal is neither an order nor an instrument.

The Id. counsel for the appellant has referred to section 68 which is of no help to the appellant as it does not fit into the present fact and circumstance

of the issue of maintainability of the appeal.

During the course of hearing, the Id. counsel for the appellant has raised the question that the respondent nos. 2 ,14 & 17 have raised the issue of

maintainability at a belated stage. I have perused the record, the respondent nos. 2 & 14 have raised the issue on the first date of filing reply so there

is no delay in raising the issue. So far as, respondent no. 17 is concerned, it has not raised any such issue of maintainability in writing and raise the

same only at the time of hearing of the issue, so the prayer of the respondent no. 17 is rejected on the ground of delay in raising the issue.

The respondent nos. 14 has relied on the judgment mentioned above. The B.V. Gopinath case is not applicable to the present fact and circumstance of

the case. In the B.V. Gopinath case, the issue was that the charge memo was not approved by disciplinary authority i.e. the Finance Minister. This is

not the case in the present appeal because the competent authority i.e. the Special Director has stated to have approved the filing of the appeal and

that on his approval the Assistant Director has filed the appeal on behalf of Enforcement Directorate. Further it is seen from the nomination letter

nominating Sh. N.K. Matta, Id. counsel for the respondent to defend the case against M/s Ganesh Jewellery and Ors. have been approved by the

Director. That means the Director was aware of proceedings of Adjudication in the present case. In view of the above this judgment is not applicable

in the present facts and circumstance of the case. The other judgments, which are on the issue of delegation of power, relied on by the respondent no.

14 are not applicable to the present appeal on the issue of maintainability.

The appellant has relied on the case of the judgment passed by Honâ?ble Supreme Court in the matter of Sugandhi (Dead) by Lrs. And Ors. Vs. P.

Rajkumar decided on 13.10.2020 wherein their lordship have observed that â??It is often said that procedure is the handmaid of justice.

Procedural and technical hurdles shall not be allowed to come in the way of the court while doing substantial justice. If the procedural

violation does not seriously cause prejudice to the adversary party, courts must lean towards doing substantial justice rather than relying

upon procedural and technical violation. We should not forget the fact that litigation is nothing but a journey towards truth which is the

foundation of justice and the court is required to take appropriate steps to thrash out the underlying truth in every dispute. Therefore, the

court should take a lenient view when an application is made for production of the documents under sub?rule (3)â??.

The aforesaid observation of the Honâ?ble Supreme Court is applicable to the present case and to advance substantial justice, procedural and

technical hurdle should not be allowed in the way. In the present appeal I have already held that the since the appeal has been filed by the

Enforcement Directorate itself through the Assistant Director, it cannot be said that the appeal is not maintainable. The truth in the allegation against

the respondents should be judicially decided and to achieve that the appeal is to be heard on merits.

During the course of hearing, it has been argued by the Id. counsels for the respondent nos. 2 & 14 that the respondent nos. 2 & 14 are prejudiced as

the filing of the appeal by an Assistant Director as the same is contrary to law as it goes to the root of the appeal. These respondents have failed to

substantiate the prejudice caused specifically. Merely saying that since the filing of appeal by an Assistant Director is contrary to law and therefore

they are prejudiced is not sufficient. Raising of objection without showing substantial prejudice being caused on account of procedural lapse as

prescribed under the Act is not sufficient in the given present facts and circumstance of the case particularly when the department itself has filed the

appeal through its authority i.e. the Assistant Director, who is being duly authorized by the competent authority of the same class of the

Director.

The PMLA, 2002 has provided two forum of appeal relating to have attachment, one forum is Appellate Tribunal constituted u/s 25 of the said Act

and the second appeal lie to High Court u/s 42 of the said Act.

Under section 26(1) of the said Act, the word 'the Director' is appearing where as no authority is specifically named under section 42 of the said

Act. That does not mean neither the Director nor any of the other classes of authorities as prescribed under section 48 or 49 of the Act are eligible to

file appeal before the Hon'ble High Courts. Appeals are being filed by the ED under section 42 of the said Act before High Courts through either of

the class of authorities as specified under section 48 of the said Act read with the notification GSR. 441(E) dated 01.07.2005. It is not that always the

director is signing the appeal and the affidavit therein.

In view of the above, it is held that the appeal is maintainable.

With the consent of both the parties list the appeal on 18th January, 2021. The parties are directed to file the written synopsis in the meantime.