

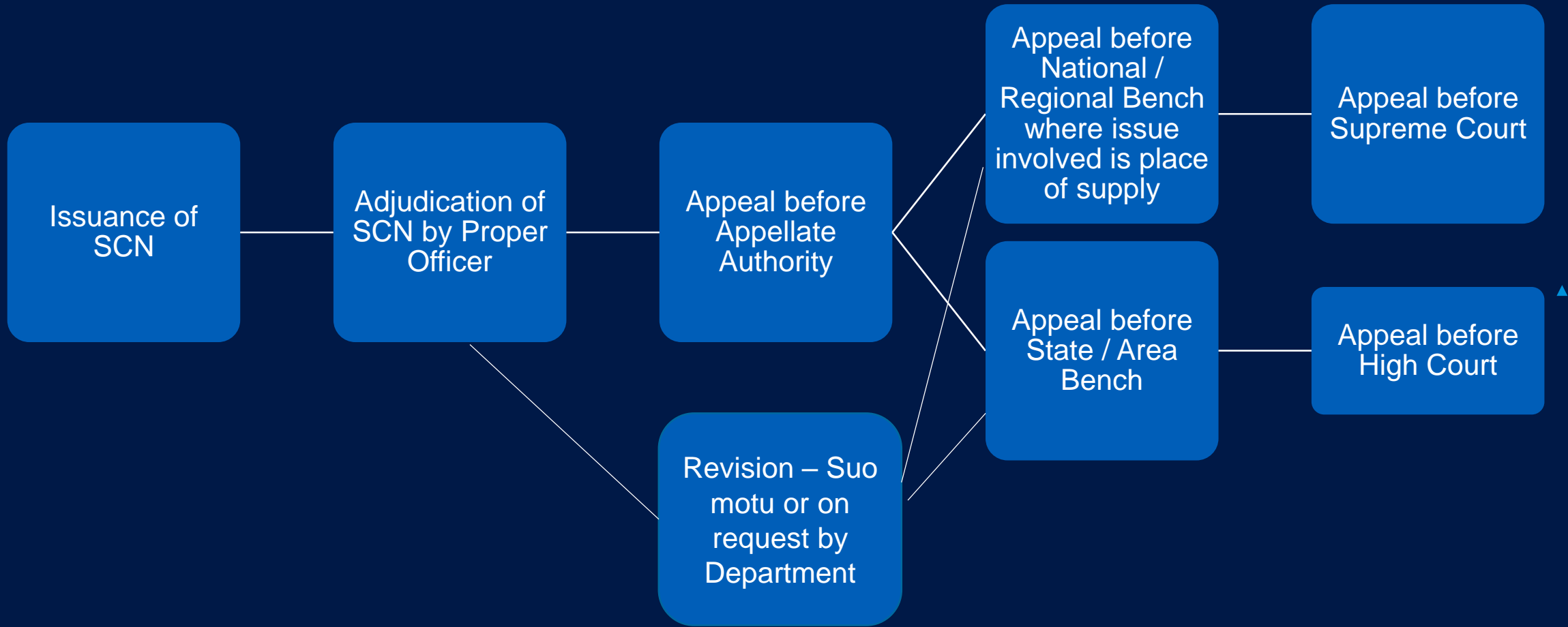


Session 4

Administering GST : Dispute Resolution, Appeal & Revision, Adjudication, Demand & Recovery

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Managing Partner

Stages of Adjudication



Issuance of Show Cause Notice and Adjudication

Activity	Normal Period of Limitation	Extended Period of Limitation
Provision	Section 73	Section 74
Situation for Issuance	Normal cases where tax is recoverable	Cases involving fraud; wilful-misstatement, suppression. <i>Suppression means non-declaration of facts / information that are required to be declared in returns; statements, etc, or failure to furnish information on being asked for. (Mens rea not required?)</i>
Limitation	At least 3 months prior to 'last date of issuance of order'	At least 6 months prior to 'last date of issuance of order'
Time Limit for Adjudication/ Last date for Order	3 years from the last date of filing annual return (31 st December). If not adjudicated within the time limit, the proceedings would be deemed to be concluded.	5 years from the last date of filing annual return (31 st December). If not adjudicated within the time limit, the proceedings would be deemed to be concluded.
Settlement before issuance of SCN	Payment of tax + interest before issuance of SCN. No penalty payable.	Payment of tax + interest along + penalty equivalent to 15% of tax before issuance of SCN.

Activity	Normal Period of Limitation	Extended Period of Limitation
Settlement before Adjudication	Payment of tax + interest within 30 days of the notice. No penalty payable.	Payment of tax + interest along + penalty equivalent to 25% of tax within 30 days.
Settlement after Adjudication	-	If the assessee pays tax + interest + 50% of penalty within 30 days of order, the proceedings would be deemed to be concluded.

Revision of Orders (Section 108)

- Where any order has been passed by an officer sub-ordinate to the Commissioner, the Revisionary Authority (RA) may stay the operation of such order if the same is prejudicial to the interest of revenue, or illegal or based on incorrect facts and pass a revised Order.
- Application for Revision- RA by its own motion or request by the Commissioner
- Revision is not permitted in following cases:
 - Order is already subject to an appeal;
 - Limitation to file appeal before Appellate Authority has not expired
 - More than 3 years have expired of passing of the Order
 - Order is already subject to Revision at the earlier stage
 - The Order is a Revision Order
- Exception: Where any issue has not been raised/decided in appeal before the appellate authority, RA may pass an order on such issue within 1 year from the appellate order or 3 years from the date of the original order, whichever is later.

Appeal to Appellate Authority (Section 107)

Limitation Period

- Appeal by assessee: 3 months from date of receipt of Order
- Appeal by Department: 6 months from date of receipt of Order
- Period may be extended by one month for sufficient cause

Time Limit for passing the Order

- One year from the date of appeal, wherever possible

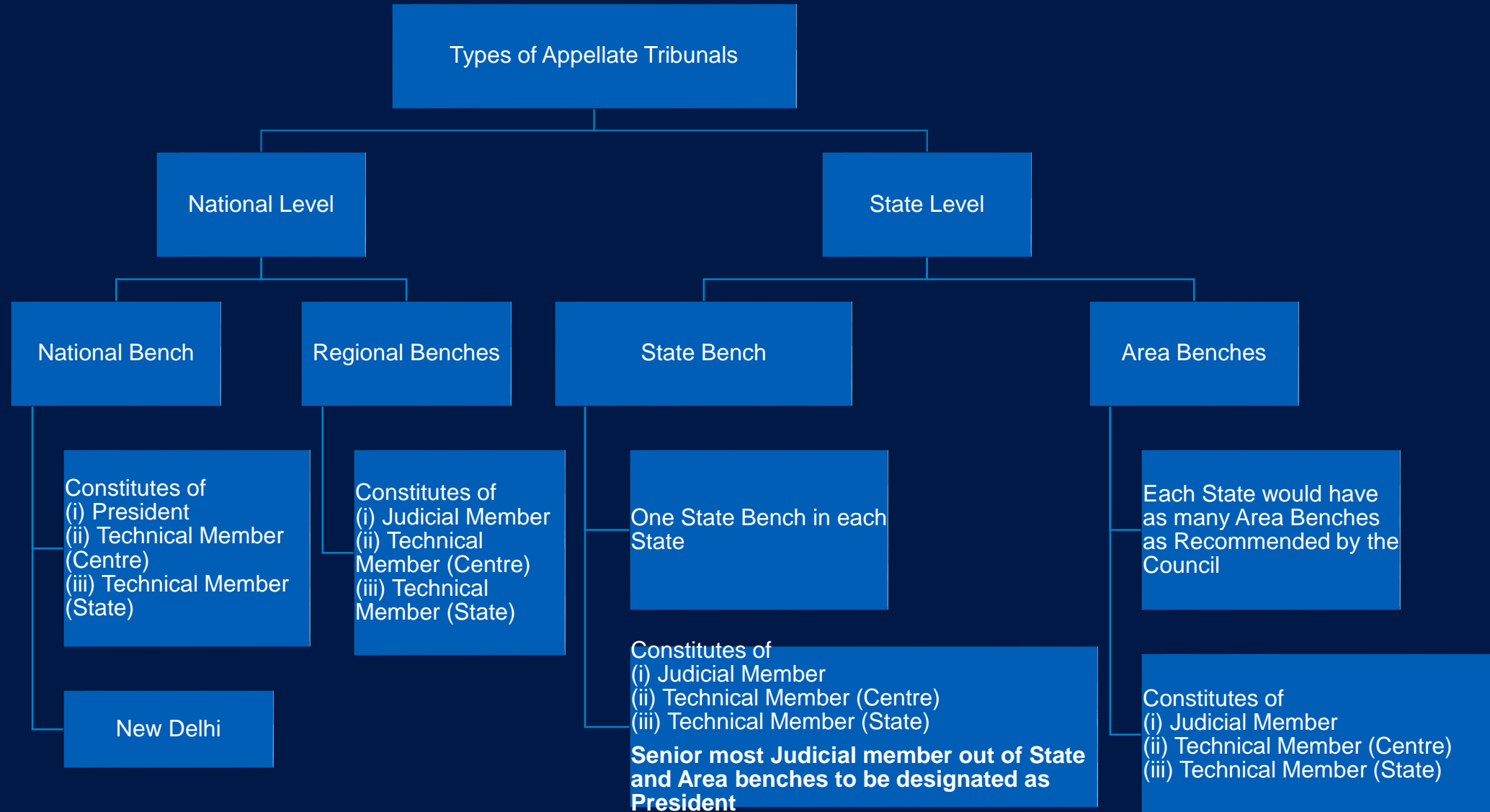
Pre-Deposit

- Any amount admitted by him, in full; and
- 10% of the remaining amount of tax in dispute. Balance amount shall be deemed to be stayed

Appealable Orders

- No power to remand
- All orders or decisions passed by the Adjudicating Authority are appealable, except the following:
 - Order by Commissioner/other authorized authority for transfer of proceedings;
 - Order pertaining to seizure or retention of books of accounts, register and other documents;
 - Order sanctioning prosecution;
 - Order permitting payment in instalments (Section 80)

Appellate Tribunal



Qualification of Members of Appellate Tribunal

President

- 'Has been' a Judge of SC; or
- 'Is or has been' the Chief Justice of HC; or
- 'Is or has been' a Judge of HC for minimum 5 years
- Tenure – three years or seventy years, whichever is earlier. Eligible for re-appointment

Judicial member

- 'Has been' a Judge of HC; or
- 'Is or has been' a District Judge qualified to be appointed as a Judge of HC; or
- 'Is or has been' a member of Indian Legal Services and has held a position not less than Additional Secretary for 3 years
- No appointment from Bar?
- Tenure – three years or sixty five years, whichever is earlier. Eligible for re-appointment

Technical Member (Centre)

- 'Is or has been' a member of IRS (Customs and CE), Group A with minimum 15 years service
- Tenure – Five years or sixty five years, whichever is earlier. Eligible for re-appointment

Technical Member (State)

- Officer of State Govt. not below the rank of Additional Commissioner of VAT or State GST or as otherwise notified by State Govt with recommendations of Council with atleast 3 years of experience in administration of existing law or SGST or ST or finance and taxation

Appeal to Appellate Tribunal (Section 112)

Limitation Period

- Appeal by assessee: 3 months from date of communication of Order
- Appeal by Department: 6 months from date of Order

Time Limit for Adjudication

- One year from the date of appeal, wherever possible

Pre-Deposit

- Any amount admitted by him, in full; and
- Additional 20% of the remaining amount of tax in dispute

Appeal to High Court (Section 117)

Appealable Order

- Passed by State Bench or Area Bench
- No power to grant stay from recovery. Inherent powers to be invoked?

Limitation Period

- 180 days from date of receipt of Order, extendable for sufficient cause

Issue in Appeal

- Appeal must carry question of law and would be heard only to such extent
- High Court can determine any issue not determined or wrongly determined by the State/Area Bench.

Bench

- Appeal will be heard by a Bench of not less than 2 Judges

Appeal to Supreme Court (Section 118)

Appealable Order

- Passed by High Court
- Passed by National Bench or Regional Bench
- No power to grant stay from recovery. Inherent powers to be invoked?

Limitation Period

- 60 days from date of receipt of Order, extendable for sufficient cause

Recovery Proceedings (Section 78, 79)

Recovery proceedings

- To be initiated if amount determined as payable under any Order not paid within 3 months from the date of service;
- May be initiated prior to 3 months, if considered necessary by the proper officer

Manner of Recovery

- Deduction from any amount payable to the assessee;
- Detention and sale of goods belonging to the assessee which are under the control of the proper officer
- Recovery from any person from whom money is due to the assessee
- Distraint and detention of any movable or immovable property of the assessee
- Certificate for recovery to be sent to the Collector where assessee owns any property or resides or carries on business
- Application before the Magistrate for carrying on recovery proceedings

Non-Appealable Orders (Section 121)

- Order by Commissioner/other authorized authority for transfer of proceedings
- Order pertaining to seizure or retention of books of accounts, register and other documents;
- Order sanctioning prosecution
- Order permitting payment in instalments (Section 80)

Advance Ruling

- Meaning: A decision provided by the Authority or the Appellate Authority to an applicant on matters relating to any supply being undertaken or proposed to be undertaken
- Applicant: Any registered person, or one desirous of obtaining registration under this Act
- Constitution: To be constituted under the SGST and UGST Acts and shall comprise of:
 - One member each from Officers of Central and State Tax.
- Orders of Advance Ruling:
 - Binding on the Applicant and Concerned / Jurisdictional Officer
 - Orders Appealable before Appellate Authority within 30 days of receipt (extendable to further 30 days)

Advance Ruling

- Issues eligible for Advance Ruling

Classification

Applicability of
Notification

Time and value
of supply

Admissibility of
ITC

Liability to pay
tax

Requirement of
registration

Qualification as
'supply'

Areas of Dispute- Points to Ponder

- Binding nature of Orders of State / Area Benches of Appellate Tribunal
- Binding nature of Orders of National Tribunal on an issue other than place of supply on State/Area Benches of Appellate Tribunal.
- Same issues (other than place of supply) may go to High Court and Supreme Court owing to jurisdiction of National Tribunal on 'place of supply' issue.
- Limitation period for conclusion of proceedings in cases of remand by Appellate forums- Director of Inspection of Income Tax (Investigation) v. Pooran Mal & Sons, (1975) 4 SCC 568; Bombay Metropolitan Region Development Authority v. Gokak Patel Volkart Ltd., (1995) 1 SCC 642 – Section 75(3).

Reducing Litigation- Extract from Economic Survey, 2017-18

7. There is substantial avoidable litigation in the tax arena which government action could reduce

The tax department's petition rate is high, even though its success rate in litigation is low and declining (well below 30 percent).

- Only 0.2 percent of cases accounted for 56 percent of the value at stake; whereas
- About 66 percent of pending cases (each less than Rs. 10 lakhs) accounted for only 1.8 percent of the value at stake.

Petition Rate and Success Rate of Tax Department, March 2017

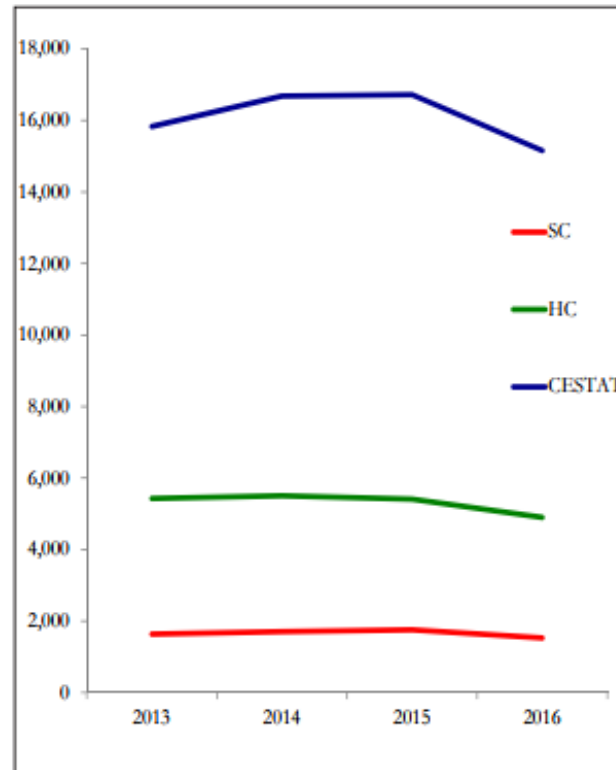
Court	Direct Tax Cases		Indirect Tax Cases	
	Success Rate	Petition Rate	Success Rate	Petition Rate
Supreme Court	27%	87%	11%	63%
High Courts	13%	83%	46%	39%
ITAT/CESTAT	27%*	88%*	12%	20%

* Provisional estimates

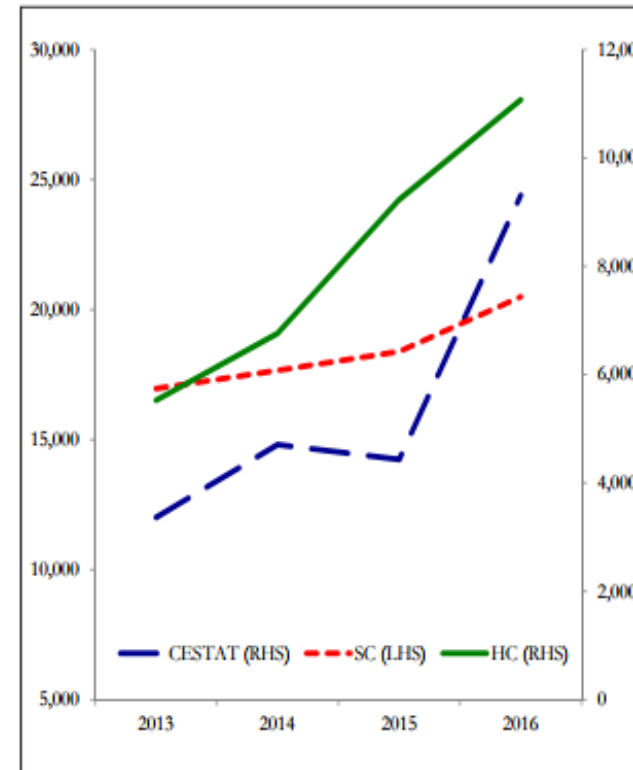
Pendency and Valuation of Department Cases- Extract from Economic Survey, 2017-18

Pendency and Valuation of Department Cases- Indirect Taxes

Number of Pending Cases (in thousand)



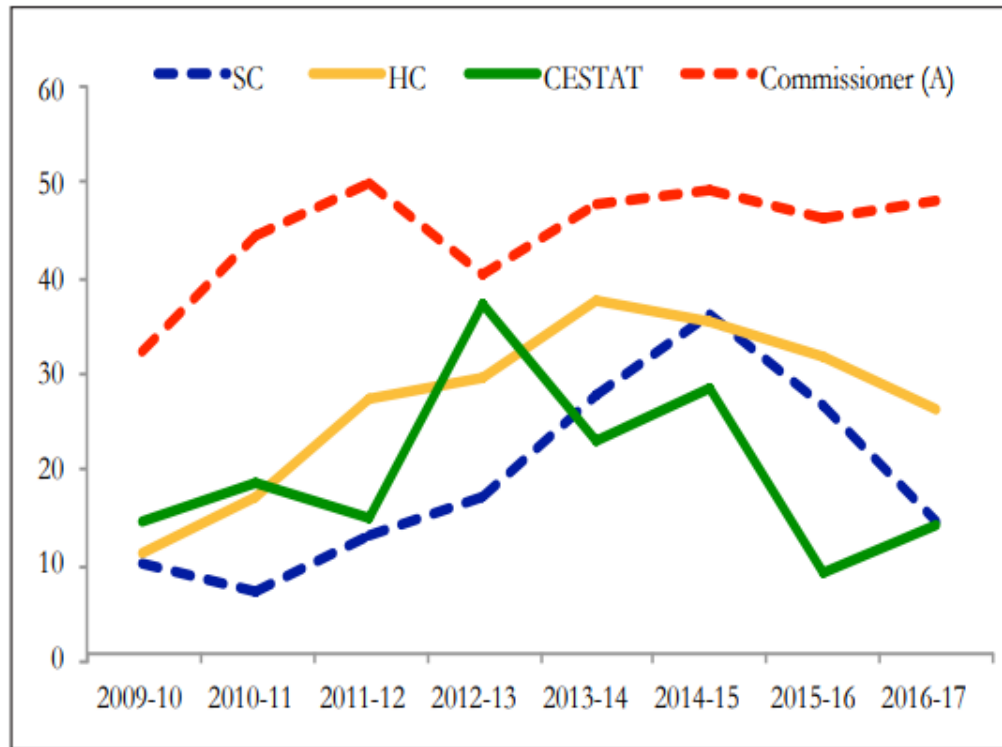
Value of Pending Cases (in lakh)



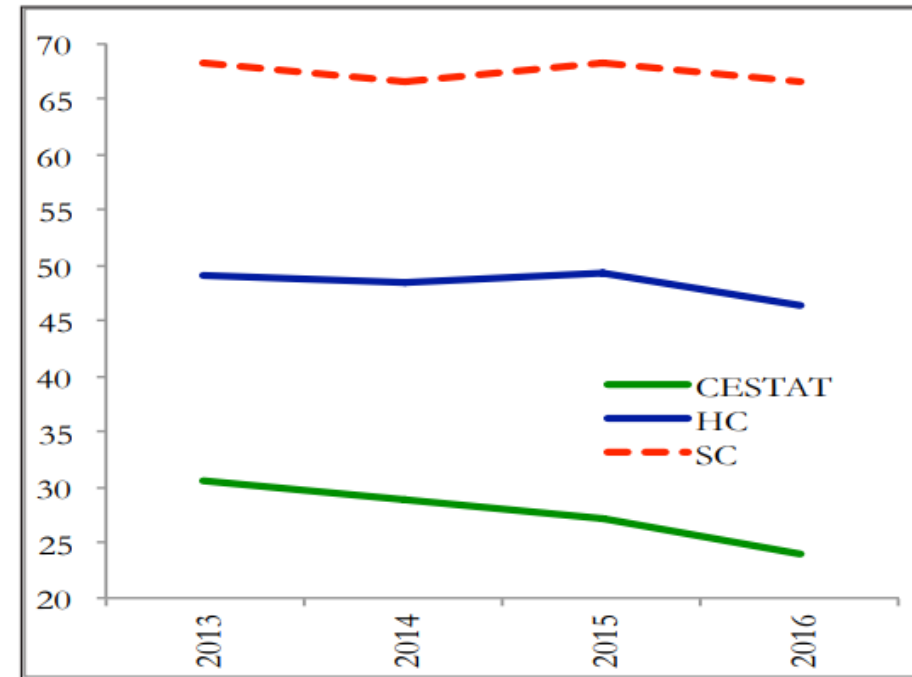
Source : Survey calculations.

Other Statistics- Economic Survey, 2017-18

Success Rate of Dept. in Indirect Tax Litigation



Petition Rate- Department (Indirect Taxes, 2008- 16, in Percentages)



Thank You