

25. Foreign Exchange Management Act, 2002

Extent and Application (Section 1)

The act extends to the whole of India, also, the act has extra territorial jurisdiction, i.e., it also applies to-

- all branches, offices and agencies outside India owned or controlled by a person resident in India; and
- any contravention committed outside India by any person to whom the act applies.

Definitions (Section 2)

- **Currency:** includes all currency notes, postal notes, postal orders, money orders, cheques, drafts, traveller's cheques, letter of credit, bill of exchange, promissory notes,, credit cards or such other similar instruments, as may be notified by the Reserve Bank. (By notification of Govt. ATM card, Debit-credit Card also include if they create financial liability as currency)
- **Foreign exchange:** means foreign currency and includes:
 - ✓ Deposits, credits and balances payable in any foreign currency;
 - ✓ Drafts, traveller's cheque, LOC, BOE, expressed or drawn in Indian currency but payable in foreign currency.
 - ✓ Drafts, travellers' cheque, LOC, BOE drawn by banks, institution or persons outside India. But payable in Indian currency.
- **Foreign security:** means any security, in the form of shares, stocks, debentures, bonds, or any other instrument denominated or expressed in foreign currency and includes securities expressed in foreign currency, but where redemption or any form of return such as interest or dividends if payable in Indian currency.
- **Transfer:** includes sale, purchase, exchange, mortgage, pledge, gift, loan or any other form of transfer or right, title, possession or lien.

Residential status

Important for practical

- **Person 2(u):** includes
 - ✓ an individual;
 - ✓ a HUF;
 - ✓ a company;
 - ✓ a firm;
 - ✓ an AOP or a BOI, whether incorporated or not;
 - ✓ every artificial judicial person, not falling with any of the preceding sub-clauses; and
 - ✓ any agency, office of branch owned or controlled by such person.
- **Person resident in India 2(v):** means
 - i. a person residing in India for more than 182 days during the course of the preceding financial year but does not include-
 - A. a person who has gone out of India or who stays outside India, in either case-
 - a. for or on taking up employment outside India, or
 - b. for carrying on outside India a business or vocation outside India, or
 - c. for any other purpose, in such circumstances as would indicate its intention to stay outside India for an uncertain period;

- B. a person who has come to or stay in India, in either case, otherwise than-
 - a. for or on taking up employment in India; or
 - b. for carrying on in India a business or vocation in India; or
 - c. for any other purpose, in such circumstances as would indicate its intention to stay outside India for an uncertain period;
- ii. any person or body corporate registered or incorporated in India;
- iii. an office, branch or agency in India owned or controlled by a person resident outside India;
- iv. an office, branch or agency outside India owned or controlled by a person resident in India.

Practical issues in M.Bhandari P.N. 25

Regulation and management of foreign exchange

➤ retraction on dealings in foreign exchange securities (Section 3)

- ✓ no person shall deal in or transfer any foreign exchange or foreign security to any person *not being an authorised person*.
- ✓ no person shall make any payment to or for the order of any person resident outside India in any manner.
- ✓ No person shall receive, *otherwise through an authorised person*, any payment by order or on behalf of any person resident outside India in any manner.

Provided that, if a person resident in India receives any advance payment from an authorised person (i.e., where an authorised person has not received the foreign exchange from person resident outside India), the person resident in India shall be deemed to have received the payment otherwise than through an authorised person. i.e., contravention of FEMA.

- ✓ No person shall enter into any 'financial transaction' in India as consideration for or in association with acquisition or creation or transfer of a right to acquire, any asset outside India by any person.

➤ Relaxation in restrictions: relaxed in the following manner-

- a. by making a provision to that effect in the Act.
- b. By making a provision to that effect in the rules and regulation made under the act.
- c. By the general permission of the reserve bank.
- d. By the special permission of the reserve bank.

➤ General permission

- ✓ **For (a) clause** - The RBI has permitted any person to buy from any post office,, in accordance with any law or rules made there under for the time being in force, any foreign exchange in the form of postal orders or money orders.
- ✓ **For (c) to (d) clause** – this clause is not apply to any transaction entered into in Indian rupees by or with-
 - a. a person who is a citizen of India, Nepal or Bhutan resident in Nepal or Bhutan;
 - b. a branch situated in Nepal or Bhutan of any business carried on by a company or a corporation incorporated in India, Nepal or Bhutan; and
 - c. a branch situated in Nepal or Bhutan of any business carried on as a partnership firm or otherwise by citizen of India, Nepal or Bhutan.

➤ Restriction on holding of foreign exchange (Section 4)

- ✓ Not hold transfer or possess any property outside India without permission of RBI.

General permissions for payments by a person resident in India

No person shall make any payment to or for the order of any person resident outside India in any manner, except as provided in the act, or permission by RBI [3(b)]

The RBI has issued a general permission permitting any person resident in India to make *payment in Indian rupees* in the following cases:

- a. Expenses of hospitality of a person visiting India.
- b. Purchase of a gold or silver – only by crossed cheque or draft
- c. Payment to a guarantor
- d. Payment to non-whole time director – a director is non-resident and visit India for business work. Subject to provision made under memorandum and AOA or agreement.

Receipt by a person resident in India – general permission

- Any person may receive any payment made in rupees by order or on behalf of a person resident outside India during his stay in India out of rupee fund provided him by sale of foreign exchange to an authorised dealer or a money changer in India.
- Any person may receive any payment made by a means of a cheque drawn on a bank situated outside India or a bank draft or travellers' cheque issued outside India subject to the condition that the foreign exchange so received shall be offered for sale to an authorised dealer or a money changer within 7 days of receipt thereof.
- Any person may receive any payment made in foreign currency notes directly from outside India subject to the condition that the foreign exchange so received shall be offered for sale to an authorised dealer or a money changer *within 7 days* of receipt thereof.
- Any person may receive any payment by means of postal order in postal money issued by a post office outside India.

Authorised Person

- **Definition:** authorised person means an authorised dealer, money changer, off-shore banking unit or any other person for the time being authorised under section 10(1) to deal in foreign exchange or foreign securities.

Application for appointment (section 10)

- by whom – dealer, money changer, off-shore banking
- to whom – RBI
- RBI authorised any person to deal in foreign exchange and such order shall be in writing subject to the condition laid down therein.

Revocation of authorisation: in the following cases

- ✓ If RBI satisfied that such revocation is in public interest.
- ✓ Contravention of act. (after giving reasonable opportunity of making representation)

Duties of authorised person

- a. To comply with RBI direction
- b. Not to engage in unlawful transaction
- c. To ensure compliance with act, rules etc.
- d. To report to RBI apprehended contravention of the act. – for such person who contravene the act

Powers of Reserve bank (Section 11)

- a. Issue of directions
- b. Calling of information
- c. Penalty for contravention
 - ✓ When penalty levied? In the following cases
 - Where an AP contravenes any direction given by the RBI under this act,
 - Fails to file any return as directed by the RBI
 - ✓ Amount
 - Shall not exceed Rs. 10,000
 - continuing offence – further penalty not exceeding Rs. 2000/day
 - ✓ Opportunity of being heard to be given.

Power of RBI to inspect authorised person (Section 12)

- a. inspection by RBI
 - ✓ notice for inspection given in writing
 - ✓ purpose
 - verifying the correctness of any statement, information or particulars furnished to the RB;
 - obtaining any information or particulars which such authorised person has failed to furnish on dealing called upon to do so;
 - securing compliance with the provisions of act or of any rules, regulations, directions, or orders made there under.
- b. It shall be duty every authorised person to produce information, books of account or any other information which is ordered by a person authorised by RB for inspection.

Current account transaction

➤ **Transaction**

- ✓ Payment due in connection with foreign trade, other current business, services, and short-term banking and credit facilities in the ordinary course of business;
- ✓ Payments due as interest on loans and as net income from investment;
- ✓ Remittances for living expenses of parent, spouse and children residing abroad;
- ✓ Expenses in connection with foreign travel, education and medical care of parents, spouse and children.

➤ **No restrictions**

Foreign exchange is freely available for a current account transaction if the following conditions are satisfied:

- a. The transaction is not prohibited by the rules;
- b. The transaction is within the ceiling, if any, prescribed by the rules, or the permission of the RBI or the CG, as the case may be, is obtained.

‘drawal of foreign exchange ‘ means drawal of foreign exchange from an authorised person and includes opening of LOC or use of international credit-debit card or ATM card or any thing by whatever name called which has the effect of creating a foreign exchange liability.

Rules on current account transaction

Divided in 3 categories

1. Transaction for which drawal of FE is prohibited.
2. Transaction for which FE can be drawn subject to the prior approval of the CG.
3. Transaction for which FE can be drawn subject to the prior approval of the RBI.

1. Transaction for which drawal of foreign exchange is prohibited.

- (i) Remittance out of lottery winnings.
- (ii) Remittance of income from racing/riding, etc., or any other hobby.
- (iii) Remittance for purchase of lottery tickets, banned/prescribed magazines, football pools, sweepstakes etc.
- (iv) Payment of commission on exports made towards equity investment in Joint Ventures/Wholly Owned Subsidiaries abroad of Indian companies.
- (v) Remittance of dividend by any company to which the requirement of dividend balancing is applicable.
- (vi) Payment of commission on exports under Rupee State Credit Route, except commission up to 10% of invoice value of exports of tea and tobacco.
- (vii) Payment related to "Call Back Services" of telephones.
- (viii) Remittance of interest income on funds held in Non-resident Special Rupee Scheme a/c.

2. Transaction permissible with approval of CG

Purpose of Remittance	Ministry/Department of Govt. of India whose approval is required
Cultural Tours	Ministry of Human Resources Development (Department of Education and Culture)
Advertisement in foreign print media for the purposes other than promotion of tourism, foreign investments and international bidding (exceeding US\$ 10,000) by a State Government and its Public Sector Undertakings.	Ministry of Finance, Department of Economic Affairs
Remittance of freight of vessel chartered by a PSU	Ministry of Surface Transport (Chartering Wing)
Payment of import through ocean transport] by a Govt. Department or a PSU on c.i.f. basis (i.e., other than f.o.b. and f.a.s. basis)	Ministry of Surface Transport (Chartering Wing)
Multi-modal transport operators making remittance to their agents abroad Remittance of hiring charges of transponders by (a) TV Channels (b) Internet service providers	Registration Certificate from the Director General of Shipping Ministry of Information and Broadcasting Ministry of Communication and Information Technology.
Remittance of container detention charges exceeding the rate prescribed by Director General of Shipping	Ministry of Surface Transport (Director General of Shipping)
Remittances under technical collaboration agreements where payment of royalty exceeds 5% on local sales and 8% on exports and lump sum payment exceeds US \$ 2 million	Ministry of Industry and Commerce
Remittance of prize money/sponsorship of sports activity abroad by a person other than International/National/State Level sports bodies, if the amount involved exceeds US \$ 100,000	Ministry of Human Resource Development (Department of Youth Affairs and Sports)

3. Transaction which require RBI approval

- 1 Omitted
2. Release of exchange exceeding US\$ 10,000 or its equivalent in one financial year for one or more private visits to any country (except Nepal and Bhutan).
3. Gift remittance exceeding US\$ 5,000 per financial year per remitter or donor other than resident individual;
4. (i) Donation exceeding US\$ 5,000 per financial year per remitter or donor other than resident individual;
(ii) Donations by corporate, exceeding one per cent of their foreign exchange earnings during the previous three financial years or US\$ 5,000,000, whichever is less, for,-
 - (a) creation of Chairs in reputed educational institutes;
 - (b) to funds (not being an investment fund) promoted by educational institutes; and
 - (c) to a technical institution or body or association in the field of activity of the donor company.

Explanation : For the purposes of these item numbers 3 and 4, remittance of gift and donation by resident individuals are subsumed under the Liberalised Remittance Scheme.

5. Exchange facilities exceeding US \$ 100,000 for persons going abroad for employment.
6. Exchange facilities for emigration exceeding US \$ 100,000 or amount prescribed by country of emigration.
7. Remittance for maintenance of close relatives abroad,
 - (i) exceeding net salary (after deduction of taxes, contribution to provident fund and other deductions) of a person who is resident but not permanently resident in India and—
 - (a) is a citizen of a foreign State other than Pakistan; or
 - (b) is a citizen of India, who is on deputation to the office or branch or subsidiary or joint venture in India of such foreign company,
 - (ii) exceeding US\$ 100,000 per year per recipient, in all other cases.

Explanation : For the purpose of this item, a person resident in India on account of his [employment or deputation of] a specified duration (irrespective of length thereof) or for a specific job or assignment, the duration of which does not exceed three years, is a resident but not permanently resident.]

8. Release of foreign exchange, exceeding US \$ 25,000 to a person, irrespective of period of stay, for business travel, or attending a Conference or specialised training or for maintenance expenses of a patient going abroad for medical treatment or check-up abroad, or for accompanying as attendant to a patient going abroad for medical treatment/check-up.
9. Release of exchange for meeting expenses for medical treatment abroad exceeding the estimate from the doctor in India or hospital/doctor abroad.
10. Release of exchange for studies abroad exceeding the estimates from the institution abroad or US \$ 100,000 [per academic year], whichever is higher.
11. Commission, per transaction, to agents abroad for sale of residential flats or commercial plots in India exceeding US \$ 25,000 or 5% of the inward remittance whichever is more.
15. Remittances exceeding US\$ 10,000,000 per project, for any consultancy services in respect of infrastructure projects and US\$ 1,000,000 per project for other consultancy services procured from outside India.

Explanation : For the purposes of this item number 'infrastructure project' is those related to -

- (i) Power,
- (ii) Telecommunication,
- (iii) Railways,
- (iv) Roads including bridges,

- (v) Sea port and airport,
 - (vi) Industrial parks, and
 - (vii) Urban infrastructure (water supply, sanitation and sewage).]
16. Omitted
 17. Remittances exceeding five per cent of the investment brought into India or US\$ 1,00,000 whichever is higher, by an entity in India by way of reimbursement of pre-incorporation expenses.
 18. Omitted

Remittances for transactions included in item (c) above can be permitted by AP upto the ceilings prescribed therein. Before release of foreign exchange, the Authorised Person should ensure compliances of (a), (b) & (c) above. The rules under (b) & (c) do not apply where the payment is made out of funds held in Resident Foreign Currency (RFC) Account for Exchange Earner's Foreign Currency (EEFC) Account of the remitter.

Use of international credit card abroad

- No prior approval of the RBI is required for making any payment towards expenses while in a visit outside India, to the extent of the limit of the card. There is no monetary or item-wise ceiling limit. However, the restrictions on the use of card for purchase of prohibited items.
- International credit card can be used on the internet for any purpose for which FE may be purchased from an authorised dealer in India. Not for purchase of prohibited items.

Capital Account transaction: means a transaction which alters the assets and liabilities, including contingent liabilities, outside India of persons resident in India or assets or liabilities in India or person resident outside India, and includes the following transactions:

- a. Transfer or issue of any foreign security by a person resident in India.
 - b. Transfer or issue of any security by a person resident outside India.
 - c. Transfer or issue of any security or foreign security by any branch, office or agency in India of a person resident outside India.
 - d. Any borrowing or lending in foreign exchange in whatever form or by whatever name called.
 - e. Any borrowing or lending in rupees in whatever form or by whatever name called between a person resident in India and a person resident outside India.
 - f. Deposits between persons resident in India and persons resident outside India.
 - g. Export, import or holding of currency or currency notes.
 - h. Transfer of immovable property outside India, *other than a lease not exceeding 5 years*, by a person resident in India.
 - i. Acquisition or transfer of immovable property in India, *other than a lease not exceeding 5 years*, by a person resident outside India.
 - j. Giving of a guarantee or surety in respect of any debt, obligation or other liability incurred –
 - a. By a person resident in India and owed to a person resident outside India; or
 - b. By a person resident outside India.
- Permissible capital account transaction
 - a. For payments due on account of amortisation of loan or for depreciation of direct investment in the ordinary course of business.
 - b. A person resident outside India may hold, own, transfer or invest in foreign currency, security or any immovable property situated outside India if such security or property, held or acquired or owned by such person when he was outside India or inherited from a person who was resident outside India.

- c. A person resident outside India may hold, own, transfer or invest in foreign currency, security or any immovable property situated in India if such security or property, held or acquired or owned by such person when he was resident in India or inherited from a person who was resident in India.

Regulation on capital account transaction

As per these regulations, capital account transactions may be classified under the following heads:

1. Permissible capital account transactions of persons resident in India (Schedule I)
2. Permissible capital account transactions of persons resident outside India (Schedule II)
3. Prohibited capital account transactions.

Permissible capital account transactions of persons resident in India (Schedule I)

- (a) Investment by a person resident in India in foreign securities.
- (b) Foreign currency loans raised in India and abroad by a person resident in India.
- (c) Transfer of immovable property outside India by a person resident in India.
- (d) Guarantees issued by a person resident in India in favour of a person resident outside India.
- (e) Export, import and holding of currency/currency notes.
- (f) Loans and overdrafts (borrowings) by a person resident in India from a person resident outside India.
- (g) Maintenance of foreign currency accounts in India and outside India by a person resident in India.
- (h) Taking out of insurance policy by a person resident in India from an insurance company outside India.
- (i) Loans and overdrafts by a person resident in India to a person resident outside India.
- (j) Remittance outside India of capital assets of a person resident in India.
- (k) Sale and purchase of foreign exchange derivatives in India and abroad and commodity derivatives abroad by a person resident in India.

Permissible capital account transactions of persons resident outside India (Schedule II)

- (a) Investment in India by a person resident outside India, that is to say,
 - (i) issue of security by a body corporate or an entity in India and investment therein by a person resident outside India; and
 - (ii) investment by way of contribution by a person resident outside India to the capital of a firm or a proprietorship concern or an association of a person in India.
- (b) Acquisition and transfer of immovable property in India by a person resident outside India.
- (c) Guarantee by a person resident outside India in favour of, or on behalf of, a person resident in India.
- (d) Import and export of currency/currency notes into/from India by a person resident outside India.
- (e) Deposits between a person resident in India and a person resident outside India.
- (f) Foreign currency accounts in India of a person resident outside India.
- (g) Remittance outside India of capital assets in India of a person resident outside India.

Transactions with no restriction

They are:

- (1) For amortisation of loan and
- (2) For depreciation of direct investments in ordinary course of business.

Also, restrictions cannot be imposed when drawal is of the purpose of repayments of loan instalments.

Prohibited capital account transactions

On certain transactions, the Reserve Bank of India imposes prohibition. The person resident outside India is prohibited from making investments in India in any form, in any company, or partnership firm or proprietary concern or any entity whether incorporated or not which is engaged or proposes to engaging:

- ◆ In the business of chit fund;
- ◆ A Nidhi company;
- ◆ Agricultural or plantation activities;
- ◆ Real estate business (the term shall not include developments of townships, construction of residential or commercial premises, roads or bridges) or construction of farm houses; or
- ◆ Trading in Transferable Development Rights (TDRs).

Export of goods and Services (Section 7)

Reserve bank of India's Right over the exporter and export proceeds

- a. Furnishing of declaration by an exporter of goods.
 - ✓ By whom – every exporter
 - ✓ To whom – Reserve bank or other specified authority
 - ✓ Form and manner – specified
 - ✓ Declaration content
 - i. Full value of the goods exported. (if not decided value at time of export than the amount which is receivable by way of sale of such goods in the overseas market)
- b. Furnishing of Information
 - ✓ As may be required by RB or such authority for the purpose of ensuring the realisation of the export proceeds by such exporter.
- c. Declaration by an exporter of service
 - ✓ By whom – every exporter
 - ✓ To whom – Reserve bank or other specified authority
 - ✓ Form and manner – specified
 - ✓ Declaration content
 - i. Payment for such services
- d. Realisation and repatriation of foreign exchanges, i.e., export proceeds (Section 8)
 - ✓ Where any amount due from outside in India than exporter shall take all reasonable step to realised and repatriated to India such foreign exchange within such period and in such manner as specified by the RB.
 - ✓ No person shall do or refrain from doing anything which result in-
 - i. Receipt of export proceeds otherwise than in the specified manner;
 - ii. Delaying the receipt of export proceeds beyond the specified period;
 - iii. Reduction or cessation of whole or part of the export proceeds receivable by him.

Repatriation of FE and exemptions

- Repatriate to India means bringing into the realised foreign exchange and –
 - ✓ The selling of such foreign exchange to an authorised person in India in exchange of rupees, or
 - ✓ The holding of realised amount in an account with an authorised person in India to the extent notified by the reserve bank.

and *includes* use of the realised amount for discharge of a debt or liability denominated in foreign exchange.

- Exemption from realisation and repatriation
 - ✓ Possession of foreign currency or foreign coins by any person up to such limits as the RB may specify.
 - ✓ Foreign currency account held or operated by such person up to such limit.
 - ✓ FE which is acquired or received before the 8th day of 1947.
 - ✓ FE held by a person resident in India up to such limit as the RB may specify, if such FE was acquired by way of gift or inheritance from a person referred in above 3rd clause, including any income arising there from.
 - ✓ Such other receipts as the RB may specify.

Specify limit is up to US\$2,000

- a person resident in India but not permanently resident may hold FE without any specify limit
- meaning of 'not permanently resident'
 - a. employment of a specified duration (irrespective of length); or
 - b. a specific job or assignment, the duration of which *does not exceeds 3 years*.

Penalty

Section	Contravention	Quantum of penalty
11	Of any direction by the authorised person or failures to file any return directed by RBI	➤ up to Rs. 10,000 ➤ additional of continuing offence than 2,000/day
13	Of any provision of the act, or any rule, regulation notification, direction or order or of any condition subject to which an authorisation issued	➤ Up to 3 time sum involved if it is quantifiable. ➤ If not quantifiable than Rs. 2 Lakh ➤ If continuing, than additional penalty up to Rs. 5000/day
14	Failure to pay penalty as above ➤ Demand is exceeding Rs. 1 crore ➤ In any other case	➤ Civil imprisonment - Up to 3 year - Up to 6 months

Adjudicating authority (Section 16)

- Adjudication means the process by which a contravention on any provision of the act, rule, regulation, notification, direction. Than CG has been empowered the Adjudicating authorities to who shall hold the inquiry prescribed in the manner prescribed under the act read with foreign exchange management rules, 2000.
- Appointment
 - ✓ By CG
 - ✓ CG may specify the jurisdictions of various AAs.
- Duties
 - ✓ Dispose of complaint within 1 year from the date of receipt of complaint
 - ✓ If not within 1 year than AAs record the reason for the same.
- Procedures for adjudication
 - ✓ No AA shall hold an enquiry except upon a complaint in writing made by any officer authorised by the CG.

- ✓ Issue of show cause notice
 - Notice content
 - Cause for enquiry
 - Nature of contravention committed by person
 - AAs give 10 days for answer the notice
- ✓ Holding for inquiry
 - If not satisfied with answer of notice than fix the date for hearing
 - The accused person can take assistance
 - The AAs shall give an opportunity to such person for produce documents and other relevant factor relating to contravention.
 - AAs shall have power to summon and enforce attendance of any person.
 - If accused person not presents than AAs can start their further the process and issue the order.
- ✓ Order levying penalty
 - As per section 13
 - Content of order of penalty
 - Contravention rules and regulation.
 - Dated and signed by AA
 - Order supplied at Free of charge

Compounding of contravention (Section 15)

- Contravention that can be compounded
 - ✓ Contravention on which penalty is as per section 11 can be compounded
- Who can apply?
 - ✓ By a person who has committed the contravention.
- Time limit
 - ✓ As early as possible as and not later than 180 days from the date of application.
- Authorities for compounding
 - ✓ Reserve bank
 - ✓ Directorate of enforcement
- When compounding is not permissible
 - ✓ Amount involved in contravention is not quantifiable
 - ✓ No contravention shall be compounded if an appeal has been filed by the applicant.
 - ✓ Contravention repeated within 3 years.
- Time limit for payment of compounding fee
 - ✓ Within 15 days of the order of compounding
- If the applicant fails to pay the compounding fee, the adjudication proceeding will restart. It shall be deemed that no application for compounding has ever been made by the applicant.
- Once a contravention is compounded, no further process shall be initiated.

Appeal to Special Director (Appeals) and Appellate Tribunal

- Appeal to special director (appeals) (section 17)
 - ✓ Appointment of special director is made by CG.
 - ✓ Any person aggrieved by an order of appellate tribunal may prefer an appeal to SD.

- ✓ An appeal can be filed with the SD, if the Adjudicating authority is-
 - An assistant director of enforcement; or
 - A deputy director of enforcement.
- ✓ Time limit for filing appeal
 - With 45 days from the order of adjudicating authority.
- ✓ Order of SD
 - He may pass new order or modify the order of adjudicating authority
 - He shall give an opportunity of being heard to parties before passing order
 - He shall send copy to every parties related to such appeal
- ✓ No Time limit for disposal of appeal is specified.

➤ **Appeal with an appellate tribunal(AT) (section 19)**

- ✓ AT shall be appointed by CG for hear appeals against the order of AA and SD.
- ✓ the CG or person aggrieved may prefer an appeal to AT.
- ✓ When can file? Appeal can filed against the order made by-
 - SD (Appeals);
 - An adjudicating authority *other than* an assistant director of enforcement or a deputy director of enforcement.

Thus, AT is the second AT authority which has original appellate jurisdiction as well as revisionary jurisdiction.
- ✓ Deposit of penalty
 - Such amount as may be notified by the CG before filing an appeal.
- ✓ Time limit for filing the appeal
 - Within 45 days from the date of order, as the case may be.
- ✓ Order of AT
 - It may pass new order or modify the order of adjudicating authority
 - It shall give an opportunity of being heard to parties before passing order
 - It shall send copy to every parties related to such appeal
- ✓ Time limit for disposal of application – within 180 days

Appeal to High court (Section 35)

➤ **Condition for filing appeal**

- ✓ The decision or order appealed against has been passed by the AT.
- ✓ The appeal is filed only on a question of law. A question on fact than no appeal is fled to HC the order of AT is final.

➤ **Time period**

- ✓ 60 days
- ✓ If Condonation of delay than HC may extend but not extend further than 60 days.

➤ **By whom?**

the appeal to HC may be made by either of the parties to the decision or order of the AT. The appeal shall be made as follows:

- a. Appeal by the CG
- b. Appeal by the accused

- Appeal to Supreme Court is not made by any person because no any provision for such in FEMA. HC order is final.