

PETITIONER:
UNION OF INDIA AND ANR.

Vs.

RESPONDENT:
PARAS LAMINATES (P) LTD.

DATE OF JUDGMENT 17/08/1990

BENCH:
THOMMEN, T.K. (J)
BENCH:
THOMMEN, T.K. (J)
RAMASWAMY, K.

CITATION:
1991 AIR 696 1990 SCR (3) 789
1990 SCC (4) 453 JT 1990 (3) 510
1990 SCALE (2) 283
CITATOR INFO :
E 1992 SC 522 (2)

ACT:
Customs Act, 1962: Sections 129-C(5)(6) Scope of.
Customs, Excise and Gold (Control) Appellate
Tribunal--Bench of two Members--Doubting correctness of a
judicial decision of a Bench of three members of the Tribu-
nal--Reference to President of the Tribunal for constituting
a larger Bench--Constitution of a larger Bench by the Presi-
dent--Whether contrary to judicial Discipline.

HEADNOTE:

The respondent imported certain goods and claimed in its Bills of Entry that the imported goods fell under Tariff Item No. 84.60. The Customs Authorities rejected the claim by holding that the goods were classifiable under Tariff Item No. 73.15(2). The respondents preferred an appeal before the Collector of Customs which was also dismissed. Thereafter, the respondent filed a second appeal before the Customs, Excise and Gold (Control) Appellate Tribunal contending that in view of the earlier decision of a Bench of three members of the Tribunal in Bakelite Hylam Ltd. Bombay

JUDGMENT:

E.L.T. 240 an identical classification ought to have been adopted by the Customs authorities for identical goods. By its order dated 22.10.1986 a Bench of two members of the Tribunal stated that they doubted the correctness of the earlier decision of a Bench of the three members of the Tribunal and they referred the case to the President of the Tribunal for constituting a larger Bench. By its order dated 4.3.1987 the President of the Tribunal referred the case to a larger Bench of five members.

The respondent filed a writ petition in the High Court challenging the orders of the Bench of two members and that of the President of the Tribunal, which struck down both the orders by holding that the Bench of two members ought to have followed the earlier decision of the larger Bench of 3 judges and a reference of the case to a still larger Bench was contrary to judicial precedent and judicial discipline.

In appeal to this Court, it was contended on behalf of the Union of India that Section 129-C of the Customs Act,

1962 empowers the President-
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dent of the Tribunal to constitute larger Benches to resolve conflicts in opinion arising between members of a Bench or between Benches of the Tribunal. The Tribunal has ample powers to regulate its own procedure, apart from the express provisions of the statute in that behalf.

On behalf of the respondent, it was contended that the Tribunal is a creature of the Statute. Its jurisdiction is limited to the specific powers conferred by the statute. It has no inherent jurisdiction and its powers are not plenary and are limited to the express provisions contained in the statute.

Allowing the appeal, this Court,

HELD: 1. There is no doubt that the Tribunal functions as a Court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised.
[794F-G]

1.1 Where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution.
[795A]

Maxwell on Interpretation of Statutes, Eleventh edition and Income Tax Officer, Cannanore v. M.K. Mohammad Kunhi, [1969] 71 ITR 8 15, referred to.

2. It is true that sub-section (5) refers to difference of opinion arising amongst members of a Bench in a particular case, and not specifically where the members of a Bench doubt the correctness of an earlier decision. However, section 129-C confers power of reference upon the President. That power should be construed to be wide enough to enable the President to make a reference where members of a Bench find themselves unable to decide a case according to what they perceive to be the correct law and fact because of an impediment arising from an earlier decision with which they cannot honestly agree. In such cases, it is necessary for the healthy functioning of the Tribunal that the President should have the requisite authority to refer the case to a larger
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Bench. That is a power which is implied in the express grant authorising the President to constitute Benches of the Tribunal for effective and expeditious discharge of its functions. [795H; 796A-B]

2.1 It is true that a Bench of two members must not lightly disregard the decision of another Bench of the same Tribunal on an identical question. This is particularly true when the earlier decision is rendered by a larger Bench. The rationale of this rule is the need for continuity, certainty and predictability in the administration of justice. Persons affected by decisions of Tribunals or Courts have a right to expect that those exercising judicial functions will follow the reason or ground of the judicial decision in the earlier cases on identical matters. Classification of particular goods adopted in earlier decisions must not be lightly disregarded in subsequent decisions, lest such judicial inconsistency should shake public confidence in the adminis-

tration of justice. It is, however, equally true that it is vital to the administration of justice that those exercising judicial power must have the necessary freedom to doubt the correctness of an earlier decision if and when subsequent proceedings bring to light what is perceived by them as an erroneous decision in the earlier case. In such circumstances, it is but natural and reasonable and indeed efficacious that the case is referred to a larger Bench. [795B-E]

2.2 In the instant case, the Bench of two members in their reasoned order pointed out what they perceived to be an error of law in the earlier decision and stated the points for the President to make a reference to a larger Bench. Accordingly the Bench of two members acted within their power in stating the points of law which required clarification and the President acted equally within the bounds of his power in constituting a larger Bench to hear and decide those points. [795E; 796C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3955 of 1990.

From the Judgment and Order dated 7.12.1989 of the Delhi High Court in C.W. No. 1060 of 1987.

Dr. V. Gauri Shanker, C.V. Subba Rao, S. Rajappa and M. Chandershekharan (N.P.) for the Appellants.

G.L. Sanghi. Raju Ramachandran, Dhruv Mehta and R.K. Sanghi for the Respondent.

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The Judgment of the Court was delivered by THOMMEN, J. Special Leave is granted.

This appeal by the Union of India arises from the Judgment dated 7.12.1989 of the Delhi High Court in Civil Writ No. 1060 of 1987 setting aside Orders dated 22.10.1986 and 4.3.1987. The former order was made by a Bench of two members of the Customs, Excise and Gold (Control) Appellate Tribunal (hereinafter called the 'Tribunal') and the latter order was made by the President of the Tribunal. By their Order dated 22.10.1986, the Bench of two members of the Tribunal stated that they doubted the correctness of an earlier decision of a Bench of three members of the Tribunal in *Bakelite Hylam Ltd. Bombay & Anr. v. Collector of Customs, Bombay & Anr.*, [1986] 25 ELT 240 and directed that the case of the present respondent, *Paras Laminates (P) Ltd.*, be placed before the President of the Tribunal for referring it to a larger Bench of the Tribunal. The President by his Order dated 4.3.1987 referred the case to a larger Bench of five members. These two orders were struck down by the High Court stating that the Bench of two members ought to have followed the earlier decision of the larger Bench of 3 Judges and a reference of the case to a still larger Bench was contrary to judicial precedent and judicial discipline.

In *Bakelite Hylam*, (supra) a Bench of three members had held that the goods in question fell under Tariff Item 84.60 as claimed by the importer in the Bills of Entry. In the present case, the importer claimed in its Bills of Entry that the goods imported by it fell under Tariff Item 84.60. But the customs authorities rejected the contention of the importer and classified the goods under Tariff Item 73.15(2). The importer appealed to the Collector of Customs, but without success. In its second appeal before the Bench of two members, the importer relied upon the earlier decision in *Bakelite Hylam* (supra) and contended that an identical classification ought to have been adopted by the Customs

Authorities for identical goods. The Bench of two members, however, referred the case to the President of the Tribunal for referring the same to a larger Bench. The order of the Bench of two members and that of the President have been struck down by the High Court by the impugned judgment for the reasons stated above.

Mr. V. Gauri Shanker, appearing for the appellant--Union of India, submits that section 129-C of the Customs Act, 1962 contains

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express provisions enabling the President of the Tribunal to constitute larger Benches to resolve conflicts in opinion arising between members of a Bench or between Benches of the Tribunal. The Tribunal has ample powers to regulate its own procedure, apart from the express provisions of the statute in that behalf. Counsel contends that the Tribunal has inherent or incidental or ancillary powers to effectuate the statutory powers expressly granted to it. Counsel submits that the statute must be so construed as to make the conferment of power efficacious and meaningful. To deny the power of a Bench of two members to doubt the correctness of an earlier decision and to refer the case to the President for being heard by a larger Bench is to fetter the jurisdiction expressly vested in the Tribunal and thus stifle the growth of law evolving from the decisions of the Tribunal exercising judicial powers like a Court, albeit within the statutory limits of its jurisdiction.

Mr. G.L. Sanghi, appearing for the respondent (the importer) submits that the Tribunal is a creature of the statute. Its jurisdiction is limited to the specific powers conferred by the statute. It has no inherent jurisdiction and its powers are not plenary and are limited to the express provisions contained in the statute. While the powers of a civil court are plenary and unlimited unless expressly curtailed by statute, the powers of a tribunal are the result of express grant and cannot exceed the bounds limited by the constituting statute. In the present case the powers of the Tribunal are expressly specified in the Customs Act, 1962 and those powers, counsel says, do not contain any provision enabling the President to refer a case to a larger Bench whenever a doubt about an earlier decision is expressed by another Bench of the same Tribunal. According to Mr. Sanghi, the Bench should have followed the earlier decision even if the members doubted its correctness, and should have left it to this Court to correct the error, if any.

The Tribunal is constituted by the Central Government under section 129 of the Act. One of the members of the Tribunal is appointed by the Central Government as its President. Section 129-C says that the powers and functions of the Tribunal may be exercised and discharged by Benches constituted by the President from amongst its members. Subject to certain exceptions, a Bench shall consist of one judicial member and one technical member [section 129c(2)]. Sub-section (5) of section 129-C provides for a reference of a case by the President in the event of differences in opinion arising amongst members on any point. This sub-section reads:

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"(5) If the members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, they shall state the point or points on which they differ and the case shall be referred by the President for hearing on such point or points by one

or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case including those who first heard it:

Provided that where the members of a Special Bench are equally divided, the point or points on which they differ shall be decided by the President."

Sub-section (6) Section 129C says that the Tribunal shall have the power to regulate its own procedure. It reads:

"(6) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or the discharge of its functions, including the places at which the Benches shall hold their sitting."

Sub-sections (7) and (8) of this Section provide that the Tribunal shall, for certain specific purposes, be deemed to be a civil court.

There is no doubt that the Tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the Tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised, the powers of the Tribunal are no doubt limited. Its area of jurisdiction is clearly defined, but within the bounds of its jurisdiction, it has all the powers expressly and impliedly granted. The implied grant is, of course, limited by the express grant and, therefore, it can only be such powers as are truly incidental and ancillary for doing all

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such acts or employing all such means as are reasonably necessary to make the grant effective. As stated in Maxwell on Interpretation of Statutes, (eleventh edition) "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution." See also: Income Tax Officer, Camanore v. M.K. Mohammed Kunhi, [1969] 71 ITR 815, 819.

It is true that a Bench of two members must not lightly disregard the decision of another Bench of the same Tribunal on an identical question. This is particularly true when the earlier decision is rendered by a larger Bench. The rationale of this rule is the need for continuity, certainty and predictability in the administration of justice. Persons affected by decisions of Tribunals or Courts have a right to expect that those exercising judicial functions will follow the reason or ground of the judicial decision in the earlier cases on identical matters. Classification of particular goods adopted in earlier decisions must not be lightly disregarded in subsequent decisions, lest such judicial inconsistency should shake public confidence in the administration of justice. It is, however, equally true that it is vital to the administration of justice that those exercising judicial power must have the necessary freedom to doubt the correctness of an earlier decision if and when subsequent proceedings being to light what is perceived by them as an erroneous decision in the earlier case. In such circum-

stances, it is but natural and reasonable and indeed efficacious that the case is referred to a larger Bench. This is what was done by the Bench of two members who in their reasoned order pointed out what they perceived to be an error of law in the earlier decision and stated the points for the President to make a reference to a larger Bench.

That the President has ample power to refer a case to a larger Bench is not in doubt in view of sub-section (5) of section 129-C, which we have set out above. That provision clearly says that in the event of the members of a Bench differing in opinion on any point, and the members are equally divided, the case shall be referred to the President for hearing on any such point by one or more of the members of the Tribunal, and such point shall be decided according to the opinion of the majority of the members.

It is true that sub-section (5) refers to difference of opinion arising amongst members of a Bench in a particular case, and not specifically where the members of a Bench doubt the correctness of an earlier decision. However, section 129-C confers power of reference upon the
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President. That power should be construed to be wide enough to enable the President to make a reference where members of a Bench find themselves unable to decide a case according to what they perceive to be the correct law and fact because of an impediment arising from an earlier decision with which they cannot honestly agree. In such cases, it is necessary for the healthy functioning of the Tribunal that the President should have the requisite authority to refer the case to a larger Bench. That is a power which is implied in the express grant authorising the President to constitute Benches of the Tribunal for effective and expeditious discharge of its functions.

In our view, the Bench of two members acted within their power in stating the points of law which required clarification and the President acted equally within the bounds of his power in constituting larger Bench to hear and decide those points.

In the circumstances, we set aside the impugned judgment of the High Court. The appeal is allowed with costs here and in the High Court.

T.N.A.
allowed.
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Appeal