

(1989) 12 DEL CK 0008

In the Delhi High Court

Case No : Civil Writ Appeal No. 1060 of 1987

Paras Laminates (P) Ltd.

APPELLANT

Vs

Customs, Excise and Gold (Control) Appellate Tribunal and
Another

RESPONDENT

Date of Decision : 07-12-1989

Acts Referred:

Citation : (1990) 68 CompCas 72 : (1990) 40 DLT 179 : (1990) 26 ECC 109 :
(1990) 26 ECR 483 : (1990) 45 ELT 521 : (1988) RLR 445(1)

Hon'ble Judges : S.B. Wad, J;M.K. Chawla, J

Bench : Division Bench

Advocate : R.K. Sanghi, V. Gaurishankar and Manoj Arora, for the Appellant;

Judgement

This Judgment has been overruled by : Union of India and another Vs. Paras Laminates (P) Ltd., AIR 1991 SC 696 : (1990) 87 CTR 180 : (1990) 30 ECR 305 : (1990) 49 ELT 322 : (1990) 186 ITR 722 : (1990) 3 JT 510 : (1990) 2 SCALE 283 : (1990) 4 SCC 453 : (1990) 3 SCR 789 : (1991) 80 STC 263 : (1990) 2 UJ 557

M.K. Chawla, J.—The petitioner herein is an industrial undertaking set up with the object of manufacturing decorative and industrial laminates. The main items of equipments required in the manufacture of decorative and industrial laminates are flat rectangular moulds, which are placed in and form an integral part of the hydraulic process. When layers of resin, impregnated papers are placed between the flat moulds, under the action of heat and pressure, a hard rigid product known as laminated sheet which is used for decorative and industrial purposes is formed depending upon the type of papers and residues used. These moulds are not available in India.

2. The petitioner entered into a contract with one M/s Associated Lumber & Trading Co. Ltd., Japan for the purpose of importing 60 moulds which in fact were shipped. The petitioners filed the bill of entry classifying the said moulds under tariff item no. 84.60. The Appraiser of Customs, however classified the

goods imported by the petitioner as stainless steel sheets under tariff item no. 73.15(2) and seized the goods. The petitioner filed an appeal before the Collector of Customs, Calcutta praying that they be allowed to remove the goods on payment of duty payable under tariff item no. 84.60. Their appeal was dismissed on 16th of August, 1985. The petitioner then preferred an appeal to the Central Excise and Gold Control Appellate Tribunal, New Delhi. This appeal came up for hearing before the Special Bench-B on 14th October, 1986. After full hearing, the Appellate Tribunal vide its orders dated 22nd October, 1986 and 10th of November, 1986 recommended that the case be referred to the President of the Tribunal for Constituting a larger Bench for hearing the appeal. The relevant portion of the order is quoted hereunder :-

"I have carefully gone through the Tribunal's decision reported in 1986 (8) ECR 59 . I, however, respectfully differ from the majority decision given therein."

" ACCORDINGLY, classification of the goods under heading 84.60 is liable to be ruled out. The goods, Therefore, would appear to have been correctly assessed under Tariff Heading 73.15(2)."

"It would not, however, be appropriate to give a categorical finding on the above lines in view of the Tribunal's majority decision in Bakelite Hylam's case 1986(15) Elt 240 Tri. It would be more appropriate if the case is referred to the Hon'ble President for considering the question of Constituting a larger Bench. (P.C. JAIN) Member (TECHNICAL)"

"I have had the privilege of going through the order prepared by my learned Brother Sh. P.C. Jain, Member (T). I agree with my learned Brother. Accordingly, the papers may be placed before the Hon'ble President for Constituting the appropriate Bench for deciding validity of the aforesaid decision rendered in Bakelite Hylam's case. (G.P. AGARWAL) Member (J)"

3. After passing of the said orders, the President of the Appellate Tribunal constituted a larger Bench of five members and directed the matter to be listed for hearing on 21st and 22nd of April, 1987. The petitioners were duly informed of this development vide notice dated 4th March, 1987 requiring them to be present before the larger Bench at 2 P.M. on 21st April, 1987. It is against this order that the present writ petition has been filed seeking the issuance of a writ of certiorari or any other order or direction quashing the impugned notice of the Appellate Tribunal dated 4.3.1987 as well as quashing the orders dated 20.10.86 and 10.11.86 passed in appeal by the Appellate Bench-B.

4. The short question that requires going into is as to whether the Customs, Excise and Gold (Control) Appellate Tribunal consisting of two members Bench, constituted u/s. 129 of the Customs Act, 1962 has the power or the jurisdiction to overrule its own earlier decision given by a three-member Bench, by Constituting a Bench larger than the Bench which heard and disposed of the earlier matter.

5. Section 129-C lays down the procedure to be followed by the Appellate Tribunal. Sub-section (2) of this provision provides that subject to the provisions contained in sub-sections (2) and (4), a Bench shall consist of one Judicial Member and one technical member. Sub-section (3) of Section 122(C) reads as under :-

"Every appeal against a decision or order relating, amongst other things, to the determination of any question having a relation to the rate of duty of customs or to the value of the goods for the purposes of assessment, shall be heard by a Special Bench constituted by the President for bearing such appeals and such Bench shall consist of not less than three members and shall include at least one judicial member and one technical member."

By virtue of the Customs (Amendment) Act, 1985. in place of words "three" members", the words "not less than two members" were substituted.

6. As is apparent from the provisions cited above, a Special Bench consisting of not less than 2 members is to be constituted only for hearing a class of matters i.e. appeals against decisions or orders relating to determination of questions having relation to the rate of duty of excise or to the value of the goods.

7. SUB-SECTION (5) provides that 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 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 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 these who first heard it.

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

9. With this background, let us now consider the facts and circumstances of this case leading to the constitution of a larger Bench of five members. It is not disputed that a special three-Member Bench regularly constituted to hear appeals u/s. 129-C(3) of the Act heard the appeal in the case of 1986 (8) ECR 59 . This Bench was squarely concerned with the interpretation and classification of the goods *ibid*, moulds-stainless press plates being part of the hydraulic press (as in the present case). By detailed Judgment dated 21.4.86, the Bench concluded that, in accordance with the decision of the majority, the goods in question i.e. Press plates or flat moulds are classification under head 84.60 of C.T.A. and not under Tariff item no. 73.15(2). The appeals of the importers M/s Bakelite Hylams Ltd. and M/s Wood Polymers Ltd. were accepted and review notices i.e. appeals by the Collector of Customs, Bombay were dismissed. Against this very decision, the Customs Department filed an appeal before the Supreme Court on 21.7.86 which is pending consideration.

10. In the present case, the two Judges Bench has apparently taken a different view holding that the goods imported by the petitioner company fall under Tariff item no. 73.15(2) and referred the matter to the President for Constituting a larger Bench.

11. This decision of the Bench and the direction of the President to constitute a larger Bench, with a view to overrule the prior decision of Three-Member Bench on the same subject matter and classification of the goods is not only contrary to the provisions of Section 129-C of the Customs Act, but also an improper exercise of judicial discretion.

12. In case reported as Union of India (UOI) and Others Vs. Godfrey Philips India Ltd., . the Court had the occasion to express their opinion on this aspect of the matter in these words :-

"We find it difficult to understand how a Bench of two-Judges in Jit Ram Shiv Kumar and Others Vs. State of Haryana and Others, could possibly overturn or disagree with what was said by soother Bench of two Judges in Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others, . If the Bench of two Judges in Jeet Ram's case found themselves unable to agree with law laid down in Motilal Sugar Mills case, they could have referred Jeet Ram's case to a larger Bench, but we do not think it was right on their part to express their disagreement with the enunciation of the law by a co-ordinate Bench of the same Court in Motilal Sugar Mills".

13. In a recent Judgment reported as Sunder Jas Kanyalal Bhatija and others v. The Collector, Thane, Maharashtra & others. Judgments Today 1989(3) S.C. 57. the Court impressed upon the Judges to maintain judicial decorum and legal propriety while disposing of the cases on the points already covered by the same court. The relevant observations of the Court read as under :-

"It would be difficult for us to appreciate the Judgment of the High Court. One must remember that pursuit of the law, however, glamorous it is. has its own limitation on the Bench. In a multi-Judge Court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principles to be found, no rule and no authority. The judicial decorum and legal propriety demand that where a learned single judge or a Division Bench does not agree with the decision of a Bench of coordinate Jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure."

14. It is hardly necessary to emphasize that considerations of Judicial propriety and decorum require that if a two-member Bench is appraised of a decision given on different ground on the same subject matter, the said Bench should accept and follow the same and not embark upon to reconsider the matter even if they are inclined to take a different view. That is proper and traditional way to deal with such matters. This practice is founded on healthy principles of judicial decorum and propriety. This doctrine of binding precedent has the merit of

promoting certainty and consistency in judicial decisions and enables an-organic development of the law. besides providing assurance to the individual as to the consequences of transactions forming part of his daily affairs.

15. In the present case, the order of the Two-Judges Bench is untenable for two reasons:

16. Firstly, when it had been brought to their notice that three Judges Bench of the same Court has decided the same question of interpretation of a particular tariff item, it was their duty to have followed the same even if they had formed a different view.

17. Secondly, when the earlier case of Bakelite Hylam was under challenge in the Supreme Court, it was all the more proper for that Bench to have waited the final verdict and not recommended the constitution of a larger Bench.

18. The order of the President Constituting a five-member Bench also has no support of law. The learned counsel for the respondent has not brought to our notice any provision either of the Act or of the Rules to show that the President has any such power. Assuming for purposes of this petition that the President has such power to constitute a five-member Bench, the discretion has not been lawfully exercised in view of the fact that it was contrary to the well-established principle of binding precedents and for the reasons stated above.

19. In our opinion, the President of the Tribunal had no jurisdiction to act upon the recommendations of the two-member Bench and to constitute a five-member Bench with a view to get the case of Bakelite Hylam reconsidered. Judicial propriety demanded that before the constitution of the larger Bench, the President should have waited for the decision of the Supreme Court which would have been binding on all the courts.

20. The Central Excise and Gold Control Tribunal has now been empowered to perform the functions, earlier being performed by the High Court. Against their orders, appeals lie directly to the Supreme Court. In the case of the Central Administrative Tribunal, the Supreme Court has held that a tribunal must perform its functions in a judicial manner similar to High Courts. This direction of the Supreme Court equally applies to the Central Excise and Gold Control Tribunal.

21. The Tribunal, in the present case, is a creature of the Statute and it should not exceed its powers beyond the ones conferred by the Statute. However, where the Statute is silent, it should follow the well established binding judicial precedents. If every Bench is allowed to follow or not to follow the decision of a coordinate Bench or the superior Bench or a first member Bench a lot of instability in law is bound to occur Being a Tribunal duly established under law, the citizens except that well established traditions of judicial discipline will be followed.

22. In this view of the matter, we accept the writ petition and quash the

impugned orders of the Special Bench-B dated 22.10.86 and 10.11.86. and the order of the President dated 43.37. referring the case of the petitioner to a larger five-member Bench.