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M/S. ELPRO INTERNATIONAL LTD.

v.

COLLECTOR OF CENTRAL EXCISE, PUNE

MAY 2, 1996

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[B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

Customs, Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 : Rule 31-A.

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Constitution of Bench to hear applications for rectification of mistakes—Jurisdiction of President—Scope of—Held : President did not have jurisdiction to constitute bench consisting of lesser number of Members than original Bench which passed final order—Gold (control) Act, 1968, S.81-A(2).

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Central Excises and Sult Act, 1944 : Sections 35-C and 35-D—Rectification application to rectify order passed on rectification application—Maintainability of—Question left open.

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The appellant was engaged in the manufacture of components and parts of X-Ray machines. A special Bench of three members of the Central Customs, Excise and Gold (Control) Appellate Tribunal passed final order remanding the matter to the Collector for examining whether the appellant and another company (IGE) was a related person.

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An order of rectification was passed by a Bench comprising of three members directing the rectification of the final order. A direction was given to recall the final order. The appellant file further rectification applications which came up before a Bench of the Tribunal consisting of two members. The appellant raised the plea that the said rectification applications could not be heard by a Bench comprising of less than three Members since the final order in the appeal as also the earlier rectification order were passed by a Bench comprising of three Members. The Tribunal by a majority repelled the said plea and held that the applications for rectification of mistake in the facts and circumstances, could be heard by a Bench of two Members as constituted by the President for the purpose. Being aggrieved by the said order the appellant preferred the present

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appeal.

Allowing the appeal, this Court

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HELD : 1.1. It is evident from Rule 31-A of the Customs Excise and Gold (Control) Appellate Tribunal (Procedure) Rules, 1982 that the same Bench which passed the final order, should hear the application for rectification of mistakes. Due to subsequent events, a situation may emerge when one or more of the Members who pronounced the order may cease to hold the office as a Member of the Tribunal. In such a situation, it is certainly open to the President to direct that the application may be heard by a Bench consisting of a Member/Members who did not originally hear the appeal and passed the order. The Members who constitute the Tribunal for hearing the rectification proceedings, may be different. To this extent, the President can direct otherwise. Normally, it will not enable the President to constitute entirely a new and different Bench, even if one or more of the Members who heard the appeal and rendered the order originally, are available. In any view of the matter, Rule 31-A of the CEGAT (Procedure) Rules, 1982 will not clothe the President with jurisdiction to constitute a Bench consisting of lesser number of Members, than the original Bench which heard the appeal and rendered the final order. This view is in accord with judicial decorum, discipline and fairness. Any other interpretation will bring about a situation to clothe the President of the Tribunal with arbitrary powers. Such an intention cannot be imputed in framing Rule 31-A. [251-B-F]

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1.2. Moreover, the order passed under Rule 31-A will have the impact of altering, amending or modifying the final order. A final order passed by a Bench of three Members cannot be modified or altered or amended by a Bench consisting of lesser Members. However, the question whether a rectification application would lie to rectify an order passed on rectification application is left open. [251-G, 252-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8267-68 of 1990.

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From the Judgment and Order dated 5.9.95 of the Central Customs, Excise and Gold (Control) Appellate Tribunal, New Delhi in Misc. Order No. 04/95A and 205/95A.

R.F. Nariman and K.J. John for the Appellant.

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A N.K. Bajpai, V.K. Verma and S.D. Sharma for the Respondent.

The Order of the court was delivered by

PARIPOORNAN, J. Special leave granted.

B 2. The appellants are applicants in Misc. Orders No. 04/95-A and
205/95-A before the Customs, Excise and Gold (Control) Appellate
Tribunal (hereinafter referred to as 'the CEGAT'), New Delhi Special
Bench 'A'. This appeal by special leave is filed against the majority decision
C of the CEGAT dated 5.9.1995 in the said proceedings holding that the
application for rectification of mistake, in the facts and circumstances, can
be heard by a Bench consisting of *two Members*, as constituted by the
President for the purpose.

D 3. The appellant is engaged in the manufacture of components and
parts of X-Ray machines. A special Bench of *three Members* of the CEGAT
passed final order Nos. 7 & 8/91-A dated December 18, 1990/January 8,
1991 remanding the matter to the Collector for examining whether the
appellant and another company (IGE) is a related person. The appeal filed
from the said order of CEGAT under Section 35L of the Act is pending
before this Court.

E 4. An order of rectification was passed by a Bench comprising of
three members directing the rectification of the final order, in ROM No.
E/ROM/14/91-A in E/1500/88-A. A direction was given to recall the final
order. The appellant filed further rectification applications being ROM
No. E/ROM/06/93-A and E/ROM/42/93-A. The above two applications
F came up before a Bench of the Tribunal consisting of two members. The
appellant raised the plea that the said rectification applications could not
be heard by a Bench comprising of less than three Members since the final
order in the appeal as also the earlier rectification order were passed by a
Bench *comprising of three Members*. The Tribunal by a Majority (2:1)
G repelled the said plea and held that the applications for rectification of
mistake in the facts and circumstances, can be heard by a Bench of *two
Members* as constituted by the President for the purpose. The said order
is assailed in these appeals.

H 5. We heard counsel. It is seen that the final order dated 8.1.1991 in
the appeals was passed by a Bench consisting of three Members - Shri I.J.

Rao, Technical Member (since retired), Ms. S.V. Maruthi, Judicial Member (since elevated to Andhra Pradesh High Court) and Sri G.A. Brahma Deva, Judicial Member. The Rectification Applications were heard and orders passed on 2.11.1992 by a Bench consisting of Ms. S.V. Maruthi, Judicial Member (since elevated to Andhra Pradesh High Court), Shri G.A. Brahma Deva, Judicial Member and Sri N.K. Bajpai, Technical Member (since retired). It is thereafter, the appellants filed the present applications which came up for final hearing. It is common ground that the President, CEGAT constituted the Bench comprising of Sri K.S. Venkataramani, Technical Member and Sri G.A. Brahma Deva, Judicial Member to hear the applications. When the plea of improper constitution of the Bench was taken, Sri K.S. Venkataramani, Technical Member, took the view that the Bench as constituted by the President is competent to hear the applications. On the other hand, Shri Brahma Deva, Judicial Member took the view that the applications should be heard by a Bench consisting of three Members. In view of the difference of opinion, the following point was referred for decision of a third Member :

"In the facts and circumstances, whether an application filed by the applicants for rectifying a mistake, can be heard by a Bench consisting of two members as held by the Member (T) or it should be heard by a Bench consisting of three members since the main appeal was heard by a Bench consisting of three members, as proposed by Member (J)."

(emphasis supplied).

Sri G.P. Agarwal, Member (Judicial), the third Member, to whom the matter was referred, held as follows :

"that in the facts and circumstances of the present application filed by the appellants for rectifying the mistake can be heard by a Bench of two Members as constituted by the Hon'ble President for this purpose."

(emphasis supplied)

6. During the course of arguments, Section 35D of the Central Excises and Salt Act and Rule 31-A of the CEGAT (Procedure) Rules 1982 were highlighted before us. They are as follows :

A "35-D. Procedure of Appellate Tribunal : (1) The provisions of sub-sections (1), (2), (5) and (6) of Sec. 129-C of the Customs Act, 1962 (52 of 1962), shall apply to the Appellate Tribunal in the discharge of the functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962.

B (2) Every appeal against a decision or order relating, among other things, to the determination of any question having a relation to the rate of duty of excise or the value of goods for purposes of assessment, shall be heard by a *Special Bench* constituted by the President for hearing such appeals and such Bench shall consist of

C *not less than three members* (two members) and shall include at least one judicial member and one technical member.

(3)"

(emphasis supplied)

D Rule 31A of the CEGAT (Procedure) Rules 1982 :

"31A. *Same Bench* to hear applications for rectification of mistakes - An application for rectification of mistake apparent from the record, under sub-section (2) of section 129B of the Customs Act, or sub-section (2) of section 35C of the Central Excises and Salt Act, or sub-section (2) of section 81A of the Gold (Control) Act, shall be *heard by a Bench consisting of the Members who heard the appeal giving rise to the application unless the President directs otherwise.*"

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F (emphasis supplied)

7. We perused the three different orders passed by the Members of the Tribunal. The majority of the Members have stressed the language of Rule 31-A in the CEGAT (Procedure) Rules of 1982, in holding that any application for rectification of mistake can be heard otherwise than as prescribed under Rule 31-A if the President so directs. The dissenting Member Sri Brahma Deva expressed the view that any order passed in the rectification proceedings will have the effect of modifying, amending or altering the final order and such rectified order becomes the final order in the appeal. And so, there is logic and propriety in holding that when once

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H an appeal was heard and decided by a Bench consisting of three Members,

the rectification proceedings which will have the effect of altering, amending or modifying the final order should also be heard by a Bench consisting of not less than three Member.

8. On hearing counsel, we are of the view that the dissenting order passed by Sri G.A. Brahma Deva, Member (Judicial) is legal and proper. It is evident from Rule 31-A of the CEGAT (Procedure) Rules, 1982 that the *same Bench* which passed the final order, should hear the application for rectification of mistakes. Due to subsequent events, a situation may emerge when one or more of the Members who pronounced the order may cease to hold the office as a Member of the Tribunal - by retirement, death or otherwise. Though, ordinarily, the rectification application should be heard by a Bench consisting of the Members who heard the appeal giving rise to the application, the subsequent events or the change in situation or altered circumstances, may render it impossible. In such a situation, it is certainly open to the President to direct that the application may be heard by a Bench consisting of a Member/Members who did not originally hear the appeal and passed the order. In other words, the Members, who constitute the Tribunal for hearing the rectification proceedings, may be different. To this extent, the President can direct otherwise. Normally, it will not enable the President to constitute entirely a new and different Bench, even if one or more of the Members who heard the appeal and rendered the order originally, are available. In any view of the matter, Rule 31-A of the CEGAT (Procedure) Rules 1982 will not clothe the President with jurisdiction to constitute a Bench consisting of *lesser number* of Members, than the original Bench which heard the appeal and rendered the final order. We are of the view that the above position follows from a mere reading of Rule 31-A. This view is in accord with judicial decorum, discipline and fairness. Any other interpretation will bring about a situation to clothe the President of the Tribunal with arbitrary powers. Such an intention cannot be imputed in framing Rule 31-A.

9. The order passed under Rule 31-A will have the impact of altering, amending or modifying the final order. We are of the view that a final order passed by a Bench of three Members cannot be modified or altered or amended by a Bench consisting of lesser Members. A Full Bench is superior to a Division Bench and a Division Bench to a single Member Bench. The object for constituting a Division Bench or Full Bench, is the fact that multi-Member tribunals create the opportunity for *mature*

A deliberation which improves and enhances individual decision making by adding perspectives and excluding or at least minimising faulty reasoning. Judicial property and fairness require, that so long as it is possible and feasible, the same number of Members should constitute the Bench to hear the rectification proceedings as well. It is also prudent and pragmatic and will avoid chaos. In the above prospective, we hold that the majority decision of the Customs, Excise and Gold (Control) Appellate Tribunal appealed against, is erroneous in law and so unsustainable. We set aside the orders so passed dated 5.9.195. The appeals are allowed. There shall be no order as to costs.

C Before concluding, we would like to make clear two aspects. The first aspect is, whether a rectification application will lie to rectify an order passed on rectification application. This aspect was not argued. We leave this aspect open. The second aspect is more important. We are informed that innumerable similar/rectification applications are pending before the Tribunal. We should make it clear that no applicant can claim or insist for early hearing or priority hearing of such an application. Taking into account the overall pendency of such applications, the availability of Members to dispose of such applications and the feasibility and practicability to constitute appropriate Bench, it is for the President (subject to the observations contained in this judgment) to constitute an appropriate Bench for hearing of the application. All that we want to state is that the applicant cannot insist for an early hearing or for giving a priority in the matter. It is for the President, to pass appropriate orders in his discretion, by evaluation of the volume of work, pendency of the number of applications, availability of Members and the practicability of constitution of Benches.

V.S.S.

Appeal allowed.