WHEN AN APPEAL UNDER CUSTOM ACT CAN BE HEARD BY A SINGLE MEMBER BENCH.

RESEARCH CENTER, HIGH COURT OF BALOCHISTAN

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COURT: **HON'BLE MR. JUSTICE EJWAZ AHMED SAWATHI**

SUBJECT: CUSTOM LAW

DATE: 29TH JUNE 2024

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QUERY: **WHEN A SINGLE MEMBER BENCH OF APPELLATE TRIBUNALE UNDER CUSTOM CAN HEAR AND DECIDE AN APPEAL?**

LEGAL FRAMEWORK

The procedure and constitution of benches of Appellate Tribunal under the Custom Act 1969 is governed by section 194-C of the Custom Act. A holistic reading of the said section transpires that there is a concept of the following types of Benches in the law: -

1- ***Benches (Under Section 194-C(1) & (2)) (minimum two members)***
2- ***Special Benches (Under section 194-C (3)) (minimum two members)***
3- ***Benches consisting of a single member (194-C (3A) in cases or class of cases as the Federal Government may specify by order in writing.***

(Note: Singly sitting authorized member of a Bench may decide an appeal if covered by clause (a) and (c) of section 194-C (4))

A pensive and thoughtful study of the provisions of section 194-C (1) of the Act clearly manifests that the powers and function of Appellate Tribunal is exercised and discharged by the **Benches** constituted by the Chairman from amongst members thereof. Ordinarily, a Bench is required to consists of at least one Judicial member and one technical member, ***however, cases involving duty, tax, penalty or fine exceeding five million rupees shall mandatorily be heard by Special Benches*** constituted by the Chairman, which must comprise not less than two members, and such number can also be increased by the Chairman. Nevertheless, under Section 194-C (3A) of the Customs Act, 1969, the Chairman of the Appellate Tribunal may constitute ***Single Benches*** consisting of a single member to hear ***such cases*** or ***class of cases*** as the **Federal Government** may, **by order in writing**, **specify**, **notwithstanding anything contained in subsections (2) and (3)**. This means that the Chairman has the authority to refer an appeal to a single-member bench *even if the value exceeds five million rupees*, **provided that the Federal Government has specified such cases or class of cases that can be heard by a single-member bench.**

As regard the concept of decision of an appeal singly by a member is concerned, the Chairman or any other member of the bench, authorized by the Chairman, may decide an appeal singly if the case involving falls within the category of clauses (a) & (c) of subsection (4) of the Act.

In other words, it may be interpreted that the provisions of 194-C contained under subsection (1), (2) & (3) are not mandatory in nature which are subject to discretion of the Federal Government as far as specification of cases or class of cases is concerned because the obstante clause provided under sub-section (3A) has an overriding effect over the subsections (1), (2) & (3) of section 194-C of the Act.

The judgment cited as 2015 PTD 1080 (Balochistan High Court) authored by Hon'ble Mr. Justice Muhammad Kamiran Khan Mulakhail has elucidated the section 194-C of the Act extensively. The paragraphs number 6 and 7 of the judgment are reproduced for ready reference as under:-

> ***"6. The subsection (1) of section 194-C of the Act itself contains the reply to question No.1, which provides that "the powers and functions of the Appellate Tribunal may be exercised and discharged by the benches constituted by the Chairman from amongst the members thereof". While section 194 of the Act postulates and defines the powers of Federal Government for "constituting the Appellate Tribunal, the appointment of judicial and technical members and appointment of one of them as chairman thereof". Thereafter, constituting the benches is the prerogative of the Chairman of the Tribunal and procedure for distribution of work among the benches has been provided under Rule 4 of the Customs, Excise and Sales Tax Appellate Tribunal (Procedure) Rules, 2006, and it is instructive to reproduce the Rule 4, which provides as under:--***
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> ***4. Distribution of work among the Benches.---(1) A Bench shall hear and decide such appeals and applications relating thereto made under the Act as the Chairman may, by general or special order, assign.***
>
> ***(2) When for any reason a Bench is not functioning, the Chairman may transfer an appeal or an application from such Bench to any other Bench."***
>
> ***Thus, the question No.1 is resolved in negative and Federal Government has no authority to constitute the benches and distribute the business among the benches and this is the prerogative of the Chairman of the Tribunal.***
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> ***7. Addressing the questions Nos.2 and 3 with reference to relevant provisions of the Act and the Customs, Excise and Sales Tax Appellate Tribunal (Procedure) Rules 2006, Section 194-C of the Act, makes it very clear that, a single member bench of the Tribunal can decide certain classes of cases, but the jurisdiction is subject to the certain conditions, as contained in subsections 3(a) and (4) of the referred to provision. The entrustment of the case by the Chairman also contains certain limitations, particularly, when such matter/case was earlier allotted to a bench of which the single member was a part, which was comprising of more than one member bench, but on certain circumstances, which may be unavoidable due to any reason, the Chairman has authority of entrusting the case keeping in view the urgency and exigency of the matter. The Chairman while exercising this authority shall allocate the case to a single member, who was already a member of the bench, comprising of two members, to which the matter was originally allocated. Further, this authority of Chairman is not ministerial in nature, rather***

> ***it requires a proper application of mind, such a matter can be handled singly by a member when it is going to be entrusted on account of its nature and the question involved therein. The expression used in referred to provision in subsection (4) of Section 194-C of the Act postulates that only those cases shall be entrusted to a single member, which were heard by a bench comprising of two members and due to non-availability of one of the members same can be heard by that single member. The intention of legislatures is clear and discretion of Chairman for entrustment/ allocation of the cases shall be exercised judicially keeping in view the urgency and exigency of the matter. The member of the Tribunal sitting singly cannot adjudicate upon the matter and if any such entrustment is made by the Chairman without recording the reasons thereof, it shall be without jurisdiction. Reference is made to Director, Intelligence and Investigation (Customs and Excise), Faisalabad and another v. Bagh Ali, (2010 PTD 1024).”***

It is worth mentioning that after promulgation of Finance Act 2007, a Single Member Bench has been empowered to proceed with the matter as a Single Member of the Bench. Reliance is placed upon the case of ***Messrs. Atta Cables (PVT) Ltd. through Authorized Director vs. Assistant Collector of Customs, Karachi reported as 2008 PTD 1278.*** (The case is annexed for ready reference). Same view has been taken in the following plethora of judgments: ***2008 PTD 1278***; ***2008 PTD 996***; ***2018 PTD 1897; 2008 PTD 459***; ***2009 PTD 266; 2015 PTD 1080 (Balochistan)*** and ***2022 PTD 132.***

Judicial Precedents:

Annexure(s):

1- ***Full Order cited as 2008 PTD 1278***
2- ***Full Order cited as 2008 PTD 996***
3- ***Full Judgment cited as 2018 PTD 1897***
4- ***Full Order cited as 2008 PTD 459***
5- ***Full Order cited as 2009 PTD 266***
6- ***Full Judgment cited as 2022 PTD 132***
7- ***Full Judgment cited as 2015 PTD 1080.***

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