

Dilip Kumar Vs Union of India and Others

Court: Karnataka High Court

Date of Decision: Jan. 19, 2015

Acts Referred: Advocates Act, 1961 - Section 30, 33
Central Excises and Salt Act, 1944 - Section 35(q)(2)(d), 35Q
Company Secretaries Act, 1980 - Section 6
Constitution of India, 1950 - Article 14, 19(1)(g), 21, 22(1)
Customs Act, 1962 - Section 108, 129, 129 (6), 129(6), 146
Finance Act, 2007 - Section 110
National Tax Tribunal Act, 2005 - Section 13(1), 15

Citation: (2015) 322 ELT 674 : (2015) ILR Kar 999 : (2015) 2 KCCR 1506

Hon'ble Judges: D.H. Waghela, C.J.; Ram Mohan Reddy, J

Bench: Division Bench

Advocate: Sridhar G., for the Appellant

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Ram Mohan Reddy, J.

An advocate enrolled in the Karnataka State Bar Council on 04.08.2006 and a legal practitioner has presented

this petition as a Public Interest Litigation, on 20.11.2014, calling in question the endorsement dated 29.08.2006, Annexure-B on the assertion that

no minimum qualification is provided for in the matter of appointment as special counsel, while, the only criterion is that the special counsel must be

a retired officer from the department having experience in indirect taxation. Grounded on the contention that in the absence of necessary guidelines,

Rule 9 of the Customs (Appeals) Rules, 1982 is ultra vires Customs Act, 1962 and Rule 12 of the Central Excise (Appeals) Rules, 2001 is ultra

vires Central Excise Act, 1944, has sought the following reliefs:

(i) set-aside the impugned endorsement bearing F. No. 278-A/86/2004-Legal dated 29.08.2006, produced as Annexure-B;

(ii) Declare that Rule of Customs (Appeals) Rules, 1982 is ultra vires Customs Act, 1962 and Rule 12 of Central Excise (Appeals) Rules, 2001 is

ultra vires the Central Excise Act, 1944;

(iii) Frame guidelines for regulating the conduct of special counsels;

2. In the first place, this petition presented eight years after issue of the endorsement, Annexure-B impugned, is liable to be rejected at the

threshold, on inordinate delay and laches.

3. On the merit of the matter, it is asserted that the Central Board of Excise and Customs (for short "CBEC") is a nodal national agency responsible

for administering Customs, Excise, Service Tax and Narcotics. The function of the erstwhile Central Board of Revenue, under the Central Boards

of Revenue Act, 1963, was entrusted to the Central Board of Direct Taxes and Central Board of Excise and Customs, while all other matters

were entrusted to the Central Board of Excise and Customs. It is said that, the Customs and Excise Department fall under the Department of

Revenue, Ministry of Finance, Government of India staffed with officers of the Indian Revenue Service and those selected through departmental

examinations; the CBEC is entrusted the task of formulation of policy concerning levy and collection of customs and central excise duties and

service tax, prevention of smuggling and administration of matters relating to customs, central excise, service tax and narcotics; and is the

administrative authority for its subordinate organizations including Custom Houses, Central Excise and Service Tax Commissionerates and Central

Revenue Control Laboratory.

4. According to the petitioner, the endorsement, Annexure-B, dated 29.08.2006 was issued to create a panel of special counsel to represent

Customs and Central Excise Department before the departmental officers and before Custom Excise and Service Tax Appellate Tribunal

("CESTAT" for short), in disputes, involving substantial questions of law and thereafter, by letter dated 28.04.2010 the tenure of special counsel

was extended, while, by letter dated 15.11.2011 a fresh panel of senior and junior standing counsel was constituted for handling indirect taxation

cases before the High Court and by communications dated 13.09.2012; 21.11.2012; 07.03.2014 and 17.04.2014 there were empanelment of

special counsel.

5. In order to appreciate the submissions of the learned Counsel for the petitioner, it is useful to extract Section 146-A of the Customs Act, 1962

and Section 35Q of the Central Excise Act, 1944 providing appearance by authorized representatives, which runs thus:

146A. Appearance by authorized representative.--

(1) Any person who is entitled or required to appear before an officer of customs or the Appellate Tribunal in connection with any proceedings

under this Act, otherwise than when required under section 108 to attend personally for examination on oath or affirmation, may, subject to the

other provisions of this section, appear by an authorised representative.

(2) For the purpose of this section, ""authorised representative"" means a person authorized by the person referred to in sub-section (1) to appear

on his behalf, being

(a) his relative or regular employee; or

(b) a custom house agent licensed under section 146; or

(c) any legal practitioner who is entitled to practise in any civil court in India; or

(d) any person who has acquired such qualifications as the Central Government may specify by rules made in this behalf.

(3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service--Group A

and has retired or resigned from such service after having served for not less than three years in any capacity in that service shall be entitled to

appear as an authorised representative in any proceedings before an officer of customs for a period of two years from the date of his retirement or

resignation, as the case may be.

(4) No person--

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceeding under this Act, the Central Excises and Salt Act, 1944 (1 of 1944), or the Gold

(Control) Act, 1968 (45 of 1968); or

(c) who has become an insolvent, shall be qualified to represent any person under sub-section (1), for all times in the case of a person referred to

in clause (a), and for such time as the [Commissioner of Customs] or the competent authority under the Central Excises and Salt Act, 1944, or the

Gold (Control) Act, 1968, as the case may be, may, by order, determine in the case of a person referred to in clause (b) and for the period during

which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person --

(a) who is a legal practitioner, is found guilty of misconduct in his professional capacity by any authority entitled to institute proceedings against him,

an order passed by that authority shall have effect in relation to his right to appear before an officer of customs or the Appellate Tribunal as it has in

relation to his right to practise as a legal practitioner;

(b) who is not a legal practitioner, is found guilty of misconduct in connection with any proceedings under this Act by such authority as may be

specified by rules made in this behalf, that authority may direct that he shall thenceforth be disqualified to represent any person under sub-section

(1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely:-

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(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the

Board to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred,

until the disposal of the appeal.]

Section 35Q. Appearance by authorised representative. --

(1) Any person who is entitled or required to appear before a Central Excise Officer or the Appellate Tribunal in connection with any proceedings

under this Act, otherwise than when required under this Act to appear personally for examination on oath or affirmation, may, subject to the other

provisions of this section, appear by an authorised representative.

(2) For the purposes of this section, "authorized representative" means a person authorised by the person referred to in sub-section (1) to appear

on his behalf, being --

(a) his relative or regular employee; or

(b) any legal practitioner who is entitled to practise in any civil court in India; or

(c) any person who has acquired such qualifications as the Central Government may prescribe for this purpose.

(3) Notwithstanding anything contained in this section, no person who was a member of the Indian Customs and Central Excise Service -- Group

A and has retired or resigned from such Service after having served for not less than three years in any capacity in that Service, shall be entitled to

appear as an authorised representative in any proceedings before a Central Excise Officer for a period of two years from the date of his retirement

or resignation, as the case may be.

(4) No person,

(a) who has been dismissed or removed from Government service; or

(b) who is convicted of an offence connected with any proceeding under this Act, the Customs Act, 1962 (52 of 1962) or the Gold (Control) Act,

1968 (45 of 1968); or

(c) who has become an insolvent, shall be qualified to represent any person under sub-section (1), for all times in the case of a person referred to

in clause (a), and for such time as the [Commissioner of Central Excise] or the competent authority under the Customs Act, 1962 or the Gold

(Control) Act, 1968, as the case may be, may, by order, determine in the case of a person referred to in clause (b), and for the period during

which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person,

(a) who is a legal practitioner, is found guilty of mis-conduct in his professional capacity by any authority entitled to institute proceedings against

him, an order passed by that authority shall have effect in relation to his right to appear before a Central Excise Officer or the Appellate Tribunal as

it has in relation to his right to practise as a legal practitioner;

(b) who is not a legal practitioner, is found guilty of mis-conduct in connection with any proceedings under this Act by the prescribed authority, the

prescribed authority may direct that he shall thenceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or clause (b) of sub-section (5) shall be subject to the following conditions, namely:-

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(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the

Board to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred,

until the disposal of the appeal.

6. Rules relevant to the aforesaid provisions are set out in Rule 9 of Customs (Appeals) Rules, 1982; and Rule 12 of the Central Excise (Appeals)

Rules, which reads thus:

Rule 9. Qualifications for authorized representatives.-- For the purposes of section 146A, an authorised representative shall include a person who

has acquired any of the following qualifications, being the qualifications specified under clause (d) of sub-section (2) of the said section 146A,

namely:--

(a) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or

(b) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or

(c) a Company Secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980), who has obtained a certificate of practice under

section 6 of that Act; or

(d) a post-graduate or an Honours degree holder in Commerce or a post-graduate degree or diploma holder in Business Administration from any

recognised University; or

(e) a person formerly employed in the Departments of Customs or Central Excise or Narcotics and has retired or resigned from such employment

after having rendered service in any capacity in one or more of the said Departments for not less than ten years in the aggregate.

Explanation. -- In this rule, ""Recognised University"" means any of the Universities specified below, namely:--

I. Indian Universities

Any Indian University incorporated under any law for the time being in force in India;

II. Rangoon University

III. English and Welsh Universities

The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford, Reading, Sheffield and Wales;

IV. Scottish Universities

The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews;

V. Irish Universities

The Universities of Dublin (Trinity College), the Queen's University, Belfast and the National University of Dublin;

VI. Pakistan Universities

Any Pakistan University incorporated under any law for the time being in force;

VII. Bangladesh Universities

Any Bangladesh University incorporated under any law for the time being in force.

RULE 12: Qualifications for authorized representatives. --

For the purposes of clause (c) of sub-section (2) of section 35Q of the Act, an authorized representative shall include a person who has acquired

any of the following qualifications namely:--

(a) a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949); or

(b) a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or

(c) a Company Secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980) who has obtained a certificate of practice under

section 6 of that Act; or

(d) a post-graduate or an Honours degree holder in Commerce or a post-graduate degree or diploma holder in Business Administration from any

recognised university; or

(e) a person formerly employed in the Department of Customs and Central Excise or Narcotics and has retired or resigned from such employment

after having rendered service in any capacity in one or more of the said departments for not less than ten years in the aggregate.

Explanation. - In this rule ""recognised University"" means any of the Universities specified below, namely:--

I. Indian Universities

Any Indian University incorporated under any law for the time being in force in India

II. Rangoon University;

III. English and Welsh Universities The Universities of Birmingham, Bristol, Cambridge, Durham, Leeds, Liverpool, London, Manchester, Oxford,

Reading, Sheffield and Wales;

IV. Scottish Universities

The Universities of Aberdeen, Edinburgh, Glasgow and St. Andrews;

V. Irish Universities

The Universities of Dublin (Trinity College), the Queen's University, Belfast and the National University of Dublin;

VI. Pakistan Universities

Any Pakistan University incorporated by any law for the time being in force;

VII. Bangladesh Universities

Any Bangladesh University incorporated by any law for the time being in force.

7. The first submission of the learned counsel that under Section 33 of the Advocates' Act, 1961, it is only an advocate enrolled therein, unless

permitted by any other law, is entitled to practice before any Court or authority and since neither Customs Act, 1962 nor the Central Excise Act,

1944 relaxes this requirement, Rule 9 of the Customs (Appeals) Rules, 1982 and Rule 12 of the Central Excise (Appeals) Rules, 2001 are ultra

vires the two enactments, is but a specious plea. So also, the second submission that a person enrolled as an advocate is entitled to practice before

any authority or Court, unless there is a law to the contrary, and therefore a person possessing a degree in law alone is entitled to appear as

Authorized Representative"", is yet another specious plea. The aforesaid provision of both the statutes permit legal practitioners to appear before

officers and Appellate Tribunal as ""Authorized Representative"" and therefore, petitioner cannot have any grievance. A person enrolled as an

advocate under the Advocates' Act, 1961 is not ipso facto entitled to a right of audience in all Courts unless Section 30 of that Act is first brought

into force. A right of an advocate brought on the roles to practice is, therefore, just what is conferred on him by Section 14(1)(a) and (c) of the

Bar Council's Act, 1926. We may notice that apart from Article 22(1) of the Constitution, no litigant has a fundamental right to be represented by

a lawyer in any Court, since such a right is envisaged in an accused who is arrested and detained in custody. Reference may be made to the

observations of three Judge Bench decision of the Apex Court in Lingappa Pochanna Appelwar Vs. State of Maharashtra and Another, AIR 1985

SC 389 : (1984) 2 SCALE 1022 : (1985) 1 SCC 479 : (1985) 2 SCR 224 , as also Paradip Port Trust, Pradip v. Their Workmen 1997(1) SCR

page 537.

8. The next submission is that Rule 7 of the Bar Council of India Rules restricts an officer, after retirement, if enrolled as an advocate, to practice in

all the judicial, administrative Courts/Tribunals presiding over by the officer equivalent or lower in post which such officer last held, regard being

had to safeguarding the independence of the judiciary and to remove any apprehension of prejudice and bias, hence the endorsement, Annexure-B

not providing such safeguards is arbitrary and illegal. Elaborating on the same by way of illustration, learned counsel submits that a retired officer of

the department and the technical member of CESTAT and other quasi judicial authorities, if appointed as special counsel and appear before the

Presiding Officer, their junior in service, creates an apprehension of pre judice and bias. Reliance is placed upon paragraph 30 of the decision of

the Apex Court in N.K. Bajpai Vs. Union of India (UOI) and Another, AIR 2012 SC 1310 : (2012) 2 CTC 449 : (2012) 190 ECR 159 : (2012)

3 RCR(Civil) 459 : (2012) 3 SCALE 452 : (2012) 4 SCC 653 : (2012) AIRSCW 1974 : (2012) 2 Supreme 417 .

9. In the first place, the facts in N.K. Bajpai"s case are that the act of the legislature inserting subsection (6) to Section 129 of the Customs Act,

1962 as introduced by Section 110 of the Finance Act, 2007 w.e.f. 11.05.2007, debarred a member/President/Vice President of CESTAT to

appear, act and plead, on their demitting office before the very same Tribunal. The challenge to the said provision on the following grounds was

negated; that the officers on demitting office, the impugned insertion was unavailable on the statute book, in other words applied prospectively;

ultra vires Article 14, Article 19(1)(g) and Article 21 of the Constitution as also as authorized representative under Section 146-A(2)(d) r/w Rule

12(e) of the Customs (Appeals) Rules, 1982; Section 35(q)(2)(d) r/w Rule 12 (e) of the Central Excise (Appeals) Rules, 1982.

10. The submission of illogical presumption of likelihood of bias was negated on the premise that one of the relevant factors which probably

would have weighed on the mind of the legislature is the element of bias was presumptuous, more appropriately, when a member of the Tribunal

over a long period and other members have been co-members, whether, judicial or technical. Besides the possibility of bias, it was held, that there

is a legitimate expectation on the part of the litigant before the Tribunal that there shall not be any possibility of justice being denied or being not

done fairly. At paragraphs 35, 38, 39 and 41, it was observed thus:

35. Bias must be shown to be present. Probability of bias, possibility of bias and reasonable suspicion that bias might have affected the decision

are terms of different connotations. They broadly fall under two categories, i.e., suspicion of bias and likelihood of bias. Likelihood of bias would

be the possibility of bias and bias which can be shown to be present, while suspicion of bias would be the probability or reasonable suspicion of

bias. The former lead to vitiation of action, while the latter could hardly be the foundation for further examination of action, with reference to -the

facts and circumstances of a given case. The correct test would be to examine whether there appears to be a real danger of bias or whether there

is only a probability or even a preponderance of probability of such bias, in the circumstances of a given case. If it falls in the prior category, the

decision would attract judicial casteism but if it falls in the latter, it would hardly effect the decision, much less adversely.

38. Besides the possibility of bias, there is a legitimate expectation on the part of a litigant before the Tribunal that there shall not be any possibility

of justice being denied or being not done fairly. These are the concepts which are very difficult to be defined and demarcated with precision. Some

element of uncertainty would be prevalent. There can be removal of doubts to the facts of a given case that would help in determining matters with

somewhat greater uncertainty. The contention of the petitioners that there has to be empirical data to suggest their practice before the Tribunal

resulted in instances of misdemeanor which would have propelled the respondents to insert such a provision in the enactment, has rightly been

rejected by the High Court. It may not even be proper to introduce such amendments with reference to any data. Suffice it - to note that these

amendments are primarily based upon public perception and normal behaviour of an ordinary human being. It is difficult to define cases where

element of bias would affect the decision and where it would not, by a precise line of distinction. Even in a group, a person possessing a special

knowledge may be in a position to influence the group and his bias may operate in a subtle manner.

39. The general principles of bias are equally applicable to our administrative and civil jurisprudence. Members of the Tribunals, called upon to try

issues in judicial or quasi-judicial proceedings should act judicially. Reasonable apprehension is equitable to possible apprehension and, therefore,

the test is whether the litigant reasonably apprehends that bias is attributable to a member of the Tribunal. Repelling the apprehension of bias in

administrative action, the Courts have taken the view that in the case where a remote relationship existed, separated by six degrees, which was the

foundation of challenge of selection to a post of clerk in the Gram Panchayat High School, the challenge was not sustainable. It is difficult to rule

out the possibility of a reasonable apprehension in the minds of the litigants who approach the -Tribunal for justice, if the reasonable restriction

introduced in Section 129(6) of the Customs Act is not enforced. Reference can be made to the judgments of this Court in the case of Manak Lal

Vs. Dr. Prem Chand, AIR 1957 SC 425 : (1957) 1 SCR 575 and Rasmiranjan Das Vs. Sarojkanta Behera and Others, AIR 1999 SC 2166 :

(1999) 9 JT 384 : (2000) 10 SCC 502 : (1999) AIRSCW 2179 .

41. The word "bias" in popular English parlance stands included within the attributes and broader purview of the word "malice", which in general

connotation, means and implies "spite" or "ill will". It is also now a well settled proposition that existence of the element of "bias" is to be inferred

as per the standard and comprehension of a reasonable man. The bias may also be malicious act having some element of intention without just

cause or excuse. In case of malice or ill will, it may be an actual act conveying negativity but the element of bias could be apparent or reasonably

seen without any negative result and could form part of a general public perception.

11. It is in this context that the Apex Court observed that, ""it is only the mischief of likelihood of bias which is sought to be prevented by the

amendment but the amendment, as a definite purpose and object to achieve which is in the high public interest. Such legislative attempt, not only to

adhere to but to enhance the values and dignity of the legal profession would add to the confidence of the common litigant in the administration of

justice and performance of duties by the Tribunal.

12. Examined in the aforesaid light, the claim of the petitioner of apprehension of bias cannot be applied in its stricto sensu. Firstly, the bar of

members of CESTAT from representing before the said Tribunal on retirement or resignation is in Section 129 (6) of the Customs Act, which

cannot be equated or said to be on par with the officers of the department after their retirement or resignation. They in-fact, form a different class.

Secondly, Sub Section (3) of Section - 146A of Customs Act, 1962 and Sub Section (3) of Section 35Q of Central Excise Act 1944, restricts a

member of the Indian Customs and Central Excise Service -group "A" on retirement or resignation after having served for not less than three years

in any capacity, from appearing as an authorized representative, in any proceeding before a Central Excise Officer for a period of two years from

the date retirement or resignation.. Thirdly, the possibility of bias or likelihood of bias must be shown to be present, while, what is canvassed is a

mere suspicion of bias which could hardly be a foundation for further examination of the action. In the circumstances, Group A" officers on

retirement or resignation from the department when appointed as special counsel to appear as authorized representative of the department, per se,

cannot be said to be in real danger of bias, but characterized as only a probability or even a preponderance of probability of such a bias, hardly

affecting the decision, muchless, adversely. Fourthly, in the absence of a challenge to the Rules over legislative competence, the Rules in question

primarily based upon public perception and normal behaviour of an ordinary human being cannot be said to be ultra vires the provisions of both the

Acts. In the words of the Apex Court, "it is difficult to define cases where element of bias would affect the decision and where it would not by a

precise line of distinction. Even in a group a person possessing special knowledge may be in a position, to influence a group and his bias may

operate in a subtle manner.

13. In addition it is submitted that the decision to create a panel of special counsel from amongst retired officers of the department to represent the

department before CESTAT and other authorities, to argue on substantial questions of law without specifying the educational qualification, is in

clear contrast to the observations of the Apex Court in Madras Bar Association Vs. Union of India (UOI), (2014) 187 CompCas 426 : (2014)

271 CTR 257 : (2014) 308 ELT 209 : (2014) 8 SCJ 553 : (2014) 227 TAXMAN 151 : (2014) 75 VST 12 . According to the learned counsel,

since advocates have requisite qualification and training to argue on substantial questions of law, a mix of various laws and not confined to one

field, hence other professionals may not be so equipped to argue on such questions of law.

14. The terms and conditions for engaging retired officials of Customs and Central Excise Services as special counsels, Annexure "B", provides for

appointment of special counsels, based upon the experience in dealing with indirect taxation matters, while duties of special counsel is appearance

in assigned cases of indirect taxation involving important/vexatious questions of law, classification and valuation disputes and cases involving high

revenue or of a recurring nature before the Tribunal Settlement Commission and other quasi judicial authorities.

15. CESTAT would hear appeals from orders of authorities under the two enactments supra, involving questions of law and that of fact, while the

orders of CESTAT are appealable to the National Tax Tribunal constituted under the National Tax Tribunal Act, 2005, only on a substantial

question of law. The submission that CESTAT hears appeals only on substantial question of law involving a mix of various laws is without merit.

16. In fact, in Madras Bar Association case, the Apex Court at paragraphs 120 and 121 observed thus:

120. It is apparent from the compilation extracted hereinabove, that the Members of NTT would most definitely be confronted with the legal

issues emerging out of Family Law, Hindu Law, Mohammedan Law, Company Law, Law of Partnership, Law related to Territoriality, Law

related to Trusts and Societies, Contract Law, Law relating to Transfer of Property, Law relating to Intellectual Property, Interpretation of

Statutes, and other Miscellaneous Provisions of Law, from time to time. The NTT besides the aforesaid statutes, will not only have to interpret the

provisions of the three statutes, out of which appeals will be heard by it, but will also have to examine a challenge to the vires of statutory

amendments made in the said provisions, from time to time. They will also have to determine in some cases, whether the provisions relied upon had

a prospective or retrospective applicability.

121. Keeping in mind the fact, that in terms of Section 15 of the NTT Act, the NTT would hear appeals from the Income Tax Appellate Tribunal

and the Customs, Excise and Service Tax Appellate Tribunal (CESTAT) only on "substantial questions of law", it is difficult for us to appreciate the

propriety of representation, on behalf of a party to an appeal, through either Chartered Accountants or Company Secretaries, before NTT. The

determination at the hands of the NTT is shorn of factual disputes. It has to decide only "substantial questions of law". In our understanding,

Chartered Accountants and Company Secretaries would at best be specialists in understanding and explaining issues pertaining to accounts. These

issues would, fall purely within the realm of facts. We find it difficult to accept the prayer made by the Company Secretaries to allow them, to

represent a party to an appeal before NTT. Even insofar as the Chartered Accountants are concerned, we are constrained to hold that allowing

them to appear on behalf of a party before NTT, would be unacceptable in law. We accordingly reject the claim of Company Secretaries, to

represent a party before NTT. Accordingly the prayer made by Company Secretaries in Writ Petition (Civil) No. 621 of 2007 is hereby declined.

While recording the above conclusion, we simultaneously hold Section 13(1), insofar as it allows Chartered Accountants to represent a party to an

appeal before NTT, as unconstitutional and unsustainable in law.

17. Apparently, such is not the position before the CESTAT since appeals involving factual disputes require adjudication and Group-A officers of

Customs and Excise Department with a minimum of 10 years experience as Special Counsel; Charter Accountant; Company Secretaries; Cost

Accountants; a Post Graduate or Honours Degree holder in Commerce or a Post Graduate or Diploma holder in Business Administration, would

be specialists in understanding and explaining issues pertaining to accounts.

18. In that view of the matter, there can be no stress on appeals being heard only on "Substantial Questions of Law", so as to draw a parallel to a

proceeding before the National Tax Tribunal and deny persons set out in both the Rules in question, to represent as "Authorized Representatives

for the department.

19. The last of the submission is that guidelines be framed to regulate the conduct of special counsel as has been done by the three Judge Bench of

the Apex Court in C. Venkatachalam Vs. Ajitkumar C. Shah and Others, (2011) 3 CPJ 33 : (2011) 10 JT 207 : (2011) 9 SCALE 479 : (2011) 5

UJ 3165 , in the matter of non advocates appearing without accreditation in disputes before the Consumer Fora under the Consumer Protection

Act, 1986.

20. In that case, the Apex Court observed that "agent" as defined under the Consumer Protection Rules, 1987, was permitted to appear as

Authorized Agent" not inconsistent with Section 33 of the Advocates" Act, 1961, while the legislature had in its mind that most of the cases before

the Consumer Forum are small cases of relatively poor people where legal intricacies are not involved and great legal skills are not required and; a

large number of litigants may not be able to offer heavy professional fee on trained advocates.

21. In the aforesaid context, the Apex Court directed the National Commission to frame comprehensive rules regarding appearance of agents,

representatives, registered organizations and/or non advocates appearing before the forum covering their qualification, conduct and ethical

behaviour, while making certain suggestions, in addition, to restrictions on the right of audience of agents and other representatives under the

Regulations.

22. Keeping in mind that in both the Rules, Agents" defined under the Consumer Protection Act, 1986, are not persons who are entitled to

represent parties as "Authorized Representatives", the aforesaid decision, with great respect, has no application and does not aid the case of the

petitioner.

23. Before parting, it must be noticed that there is always a presumption in favour of constitutionality of an enactment and the burden is upon him

who attacks it to show that there has been a clear transgression of the constitutional principles; it must be presumed that the legislature understands

correctly, appreciates the need of its own people, that its laws are directed to problems made manifest by experience and that its discriminations

are based on adequate grounds; and that the legislature is free to recognized degrees of harm and may confine its restrictions to those cases where

the need is deemed to be clearest.

24. In the result, there is no merit in the petition and is accordingly dismissed. No order as to costs.