

COMMISSIONER OF CENTRAL EXCISE, BOLPUR

v.

M/S RATAN MELTING & WIRE INDUSTRIES

(Civil Appeal No. 4022 of 1999)

OCTOBER 14, 2008

(K.G. BALAKRISHNAN, CJI, DR. ARIJIT PASAYAT,
HARJIT SINGH BEDI, P. SATHASIVAM AND J.M.
PANCHAL, JJ)

Excise and Customs:

Circulars issued by Central Board of Excise and Customs – HELD: Though are binding on authorities under the respective statutes, but cannot prevail over the law laid down on the subject by Supreme Court or High Court – It would not be correct to say that once a circular is brought to notice of Court, Revenue is precluded from taking a ground in appeal contrary to the Circular – In that event, there would be no scope for adjudication by Court – That would be against the very concept of majesty of law declared by Supreme Court and its binding effect in terms of Article 141 of the Constitution – Constitution of India – Article 141.

The instant appeals were filed by Revenue challenging the order of the Customs, Excise and Gold Control Appellate Tribunal. The appeals were listed before a three Judge Bench. During the course of hearing it was conceded by the parties that the decision of the Supreme Court¹ on which the Tribunal had placed reliance, was overruled by the Constitution Bench in *Dhiren Chemical's*² case. The stand of the respondent-assessee, on the other hand, was that observations made in *Dhiren Chemicals* case regarding the binding effect of circulars were in its favour. The three Judge Bench, therefore, made the reference to the larger Bench³.

A Answering the reference, allowing the appeals filed by Revenue and dismissing those filed by assesseees, the Court

B HELD: 1.1 Circulars and instructions issued by the Central Board of Excise and Customs are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of State Governments are concerned they represent merely their understanding of the statutory provisions. They are not binding upon Courts. It is for the Court, and not for the Executive, to declare what the particular provision of a statute says. Further, a circular which is contrary to the statutory provisions has really no existence in law. As noted in the order of reference, the correct position vis-à-vis the observations in *Dhiren Chemical's* case has been stated in Kalyani's case. [para 6-7] [658-B-E]

E *Kalyani Packaging Industry v. Union of India and Anr.*, 2004 (6) SCC 719 – upheld.

F *Collector of Central Excise v. Dhiren Chemical Industries* 2001 Supp. 5 SCR 607=2002 (2) SCC 127—referred to.

G 1.2 It would not be correct to say that once the circular is brought to the notice of the Court the challenge by the Revenue should be turned down and it cannot lodge an appeal taking a ground contrary to the circular. In that event, there would be no question of a decision of this Court on the point being rendered. Obviously, the assessee will not file an appeal questioning the view expressed vis-à-vis the circular. It has to be the revenue authority who has to question that. To lay content with the circular H would mean that the valuable right of challenge would be

COMMUN. OF CENTRAL EXCISE, BOLPUR v. M/S RATAN 655
MELTING & WIRE INDUSTS.

denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would be against the very concept of majesty of law declared by this Court and its binding effect in terms of Article 141 of the Constitution. [para 5 and 7] [658-B; 658-F-H]

CASE LAW REFERENCE

2001 Supp. 5 SCR 607 referred to para 1

2004 (6) SCC 719 upheld para 2

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 4022 of 1999

From the final Order No. E-72-99-B-1/2002 dated 22/1/1999 of the Customs, Excise & Gold (Control) Appellate Tribunal, New Delhi in Appeal No.E/4327/89-B-1

WITH

C.A. Nos. 1469 of 2002, 3197 of 2000, 3589-3592 of 2005 and 4789 of 2000

Mohan Parasaran, A.S.G., V. Shekar, Sudhir Malhotra, Poojan Malhotra, Sanjeev Malhotra, M.P. Devanath, V. Balachandran, V. Sridharan, Gajinder Jain, Alok Yadav, Pramod B. Agarwala, Rahul Kaushik, D.L. Chidananda, Gaurav Dhingra, B.V. Balram Das, (for P. Parmeswaran) for the Appearing Parties.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. On a reference made by a Bench of three Judges in *Commissioner of Central Excise, Bolpur v. v. Ratan Melting and Wire Industries, Calcutta* (2005 (3) SCC 57), these matters were placed before this Bench. The reference was necessitated because of certain observations by a Constitution Bench in *Collector of Central Excise v. Dhiren Chemical Industries* (2002 (2) SCC 127). During the hearing of the appeal before the three-Judge Bench it was fairly conceded by the parties that the decision of this Court in *Collector*

A of *Central Excise, Patna v. Usha Martin Industries* (1997 (7) SCC 47) on which the Customs, Excise and Gold (Control) Appellate Tribunal placed reliance was over-ruled by the subsequent decision of the Constitution Bench in *Dhiren Chemical's* case (supra). But learned counsel for the assessee-respondent submitted that paragraph 11 of *Dhiren Chemical's* case (supra) operates in its favour. It reads as under:

C “We need to make it clear that regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue.”

D 2. It was noted by the three-Judge Bench that the effect of the aforesaid observations was noted in several decisions. In *Kalyani Packaging Industry v. Union of India and Anr.* (2004 (6) SCC 719), it was noted as follows:

E “We have noticed that para 9 (para 11 in SCC) of *Dhiren Chemical* case (2004 (6) SCC 722) is being misunderstood. It, therefore, becomes necessary to clarify para 9 (para 11 in SCC) of *Dhiren Chemical* case (2004 (6) SCC 722). One of us (Variava, J.) was a party to the judgment of *Dhiren Chemical* case and knows what was the intention in incorporating para 9 (para 11 in SCC). It must be remembered that law laid down by this Court is law of the land. The law so laid down is binding on all courts/tribunals and bodies. It is clear that circulars of the Board cannot prevail over the law laid down by this Court. However, it was pointed out that during hearing of *Dhiren Chemical* case because of the circulars of the Board in many cases the Department had granted benefits of exemption notifications. It was submitted that on the interpretation now given by this Court in *Dhiren Chemical* case the Revenue was likely to reopen cases. Thus para

COMMUN. OF CENTRAL EXCISE, BOLPUR v. M/S RATAN 657
MELTING & WIRE INDUSTS.

9 (para 11 in SCC) was incorporated to ensure that in cases where benefits of exemption notification had already been granted, the Revenue would remain bound. The purpose was to see that such cases were not reopened. However, this did not mean that even in cases where the Revenue/Department had already contended that the benefit of an exemption notification was not available, and the matter was sub judice before a court or a tribunal, the court or tribunal would also give effect to circulars of the Board in preference to a decision of the Constitution Bench of this Court. Where as a result of dispute the matter is sub judice, a court/tribunal is, after Dhiren Chemical case, bound to interpret as set out in that judgment. To hold otherwise and to interpret in the manner suggested would mean that courts/tribunals have to ignore a judgment of this Court and follow circulars of the Board. That was not what was meant by para 9 of Dhiren Chemical case.”

3. The three-Judge Bench agreed with the view expressed in Kalyani's case (supra) and observed that the view about invalidation was sufficient to clarify the observations in paragraph 11 of Dhiren Chemical's case (supra). On taking note of the fact that Dhiren Chemical's case (supra) was decided by a bench of five Judges it was felt appropriate that a bench of similar strength should clarify the position. That is why reference was made.

4. Learned counsel for the Union of India submitted that the law declared by this Court is supreme law of the land under Article 141 of the Constitution of India, 1950 (in short the 'Constitution'). The Circulars cannot be given primacy over the decisions.

5. Learned counsel for the assessee on the other hand submitted that once the circular has been issued it is binding on the revenue authorities and even if it runs counter to the decision of this Court, the revenue authorities cannot say that they are not bound by it. The circulars issued by the Board are not binding on the assessee but are binding on revenue authori-

A ties. It was submitted that once the Board issues a circular, the
revenue authorities cannot take advantage of a decision of the
Supreme Court. The consequences of issuing a circular are
that the authorities cannot act contrary to the circular. Once the
circular is brought to the notice of the Court, the challenge by
B the revenue should be turned out and the revenue cannot lodge
an appeal taking the ground which is contrary to the circular.

6. Circulars and instructions issued by the Board are no
doubt binding in law on the authorities under the respective stat-
utes, but when the Supreme Court or the High Court declares
C the law on the question arising for consideration, it would not be
appropriate for the Court to direct that the circular should be
given effect to and not the view expressed in a decision of this
Court or the High Court. So far as the clarifications/circulars
issued by the Central Government and of the State Government
D are concerned they represent merely their understanding of the
statutory provisions. They are not binding upon the court. It is for
the Court to declare what the particular provision of statute says
and it is not for the Executive. Looked at from another angle, a
circular which is contrary to the statutory provisions has really
E no existence in law.

7. As noted in the order of reference the correct position
vis-à-vis the observations in para 11 of Dhiren Chemical's case
(supra) has been stated in Kalyani's case (supra). If the sub-
missions of learned counsel for the assessee are accepted, it
F would mean that there is no scope for filing an appeal. In that
case, there is no question of a decision of this Court on the
point being rendered. Obviously, the assessee will not file an
appeal questioning the view expressed vis-à-vis the circular. It
has to be the revenue authority who has to question that. To lay
G content with the circular would mean that the valuable right of
challenge would be denied to him and there would be no scope
for adjudication by the High Court or the Supreme Court. That
would be against very concept of majesty of law declared by
this Court and the binding effect in terms of Article 141 of the
H Constitution.

COMMIN. OF CENTRAL EXCISE, BOLPUR v. M/S RATAN 659
MELTING & WIRE INDUSTS.

8. The reference is accordingly answered holding that the correct view has been expressed by Kalyani's case (supra) as noted in the reference order. A

9. The appeals filed by the revenue are allowed while those filed by the assessee stand dismissed. B

R.P.

Appeals disposed of.