

SUPREME COURT OF INDIA

Commissioner of Sales Tax, U.P.

Vs.

Indra Industries

C.A. Nos. 9330-313 of 1994

(S. P. Bharucha, R. C. Lahoti and N. Santosh Hedge JJ.)

12.01.2000

ORDER

S.P. BHARUCHA, R.C. LAHOTI AND N. SANTOSH HEGDE, JJ.

1. The High Court decided against the Sales Tax authorities basing itself upon a circular addressed by the Commissioner of Sales Tax to all Assistant Commissioners (Tax Assessment). The Sales Tax authorities challenge the High Court's decision by special leave. On behalf of the Sales Tax authorities, it is contended that the said circular is contrary to the law and that, therefore, the High Court should have decided the matter without reference to it. Reliance was placed upon the judgment of two learned Judges of this Court in *Bengal Iron Corporation and Anr. v. Commercial Tax Officer and Ors.* 1994 Suppl.(1) SCC 310. In paragraph 18, it was said:

So far as clarifications/circulars issued by the Central Government and/or State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the courts. It is true that those clarifications and circulars were communicated to the concerned deals but even so nothing prevents the State from recovering the tax, if in truth such tax was leviable according to law.

It was submitted on behalf of the Sales Tax authorities that notwithstanding the said circular, they were entitled to recover the concerned tax from the respondent.

2. The said circular issued on 19th January, 1991 by the Commissioner of Sales Tax remains in effect till date. He has not been shown that it has been withdrawn. It is therefore, very remarkable that it should be contended on behalf of the very Sales Tax department whose Commissioner issued that circular that it is erroneous. It is very remarkable that the Sales Tax authorities should their Assistant Commissioner who deal with tax assessments in a manner which is, according to them contrary to the law.

3. A circular by tax authorities is not binding on the courts. It is not binding on the assessee. However, the interpretation that it thereby placed by the taxing authority on the law is binding on that taxing authority. In other words, the taxing authority cannot be heard to advance an argument that is contrary to that interpretation.

4. The observations in paragraph 18 of the judgment in Bengal Iron Corporation can, at best, apply only when a case of estoppel against a statute is made out.

5. The civil appeals are dismissed with costs.