(SUPREME COURT OF INDIA)

Commissioner of Customs, Calcutta and others

Vs

Indian Oil Corporation Ltd. and Another

HON'BLE JUSTICE (MRS.) RUMA PAL AND HON'BLE JUSTICE P. VENKATARAMA REDDI

17/02/2004

Civil Appeal Nos. 2342-2362 of 2001

JUDGMENT

The Order of the Court is as follows

Hon'ble Justice Mrs. RUMA PAL:

Between 1994 and 1999, M/s Indian Oil Corporation Ltd., the respondent herein, imported various petroleum products and crude oil into India. These goods were carried to different ports in India by vessels chartered for this purpose. Throughout this period, the respondent had cleared the imported goods upon payment of customs duty without protest by the custom authorities.

2. On 15th March 2000, the respondent received a show cause notice sent by the Commissioner of Customs, Calcutta, the appellant before us, alleging that the respondent had willfully misdeclared the value of the goods while making entries under Section 46 of the Customs Act, 1962 by deliberately suppressing that the demurrage charges had been paid to the ship owners under the charter party agreements. Since, according to the show cause notice payment for the demurrage had been made through the negotiating bank, the bank charges and the demurrage paid were includible in the customs value of the goods. On this basis, the assessable value was alleged to be Rs. 6026,05,71,604/-. The respondent was therefore asked to show cause why extra duty to the tune of Rs. 9,75,98,31,199/- should not be realised and why penalty should not be levied against the respondent and its officers.

3. According to the respondent, the 17th to 20th March 2000 were holidays. On 21st March, the respondent asked for time to file a written reply to the show cause notice. This was rejected by the

appellant and the demand was confirmed on 30th March 2000. Penalty equivalent to the amount of the duty determined was also levied. In addition, interest @ 20 per cent per annum was imposed.

4. The respondent filed appeals before the Commissioner of Customs (Appeals). The appeals were rejected. The respondent preferred a further appeal before the Customs Excise and Gold (Control) Appellate Tribunal (CEGAT). The Tribunal allowed the appeal of the respondent on grounds which are briefly summarised:

(1) The Central Board of Excise and Customs (CBEC) had issued a circular on 14th August 1991 in which it was said that the demurrage did not form part of the assessable value of the goods imported; the circular was binding on the Revenue and the Department could not contend otherwise;

(2) The decision of this Court in Garden Silk Ltd. Vs. Union of India relied upon by the Revenue was not an authority for the proposition that demurrage payable on account of delay in discharging goods from a vessel was includible in the value of goods while assessing the customs duty payable thereon.

(3) Under Section 14 of the Customs Act, 1962 the assessable value of the imported goods must be the price at which the goods are ordinarily sold. The payment of demurrage was not an incident of an ordinary sale. An extraordinary expenditure, like demurrage, could not be included in the assessable value of the imported goods.

5. According to the appellant, the value of the imported goods was assessable under Section 14 of the Act read with the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988. The Rules require that the transaction value had to be accepted unless the adjudicating authority has valid reasons to reject it. In that event the value would have to be determined in terms of Rule 5 to Rule 8 proceeding sequentially. The adjudicating authority had accepted the transaction value which was inclusive of cost, insurance and freight (CIF). The demurrage was a component of the cost of freight. Second, it was submitted that although Section 14 of the Customs Act provided for the valuation of goods for purposes of assessment on the price at which such or like goods are ordinarily sold, the word 'ordinary' meant nothing more than that the seller and the buyer should have conducted the transaction at arms length. The appellant relied upon the decision of this Court in M/s Eicher Tractors. Ltd. 8 to contend that demurrage was not, in this sense, an extraordinary payment. It is paid in terms of the agreement between the respondent and the vessel owner. Third, it is submitted that by virtue of Section 14 (1-A) read with Rule 9 (2)(a) of the 1988 Rules the actual cost of freight was includible in the assessable value of the imported goods. It is contended that since the 1988 Valuation Rules incorporated the GATT Valuation Principles, this country should adopt the international understanding of the concept of demurrage. A decision of the European Court indicated that the demurrage charges payable to a transport company are part of the cost of transport. In the United States the courts had held that demurrage is only an extended freight. (U.S. v. Attantic Refining Co., DCNJ, 112 F Supp. 76,80) Fourth, it is submitted that the circular issued in 1991 was not binding on the Revenue in view of the decision of this Court in Garden Silk Mills Ltd. (supra). In fact the circular had been withdrawn with effect from 2nd March 2001. Finally, it was submitted that the Tribunal had itself in the case of Panchmahal Steel Ltd. Vs. Collector of Customs, Rajkot 1996 Indlaw CEGAT 75 held that demurrage charges were includible in the assessable value of imported goods. The judgment was delivered on 4th December 1996 and "eclipsed" the 1991 circular.

6. The respondent has submitted that the circular had been issued under Section 151A of the Customs Act which was in para materia with Section 37B of the Central Excise Act and that it was well settled that the Revenue was bound by the instructions issued by CBEC. It is submitted that the Commissioner ought not to have raised or confirmed the demand in violation of the instructions of the CBEC nor was it open to the Revenue to file an appeal before this Court seeking relief contrary to the circular. On the merits, it is submitted that the 1988 Rules were subject to the provisions of Section 14 which provides that the assessable value had to be arrived on the basis of the ordinary sale price at the price of importation. It is submitted that apart from the fact that demurrage did not form part of the ordinary sale price, even Rule 9(2)(a) did not include demurrage as a component of the assessable value. The decisions in Garden Silk and Panchmahal as also the decision of the European Court have been distinguished as inapplicable. It was submitted that the order of the Commissioner was passed with undue haste, with a closed mind and in violation of the principles of natural justice.

7. Section 151-A of the Customs Act, 1961 in so far as it is relevant provides;

"Instructions to officers of customs.- The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of goods or with respect to the levy of duty thereon, issue such orders, instructions and directions to officers of customs as it may deem fit and such officers of Customs and all the other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the Board". *

8. Materially identical provisions are contained in Section 119 of the Income Tax Act, 1961 and Section 37B of the Central Excise Act.

9. **This Court has, in a series of decisions, held that circulars issued under Section 119 of the Income Tax Act, 1961 and 37B of Central Excise Act are binding on the Revenue** # . See Navnit Lal C. Jhaveri v. K.K. Sen ; Ellerman Lines Ltd. v. CIT , K.P. Varghese V. Income Tax Officer, Ernakulam ; Union of India v. Azadi Bachao Andolan , 308; Collector of Central Excise Patna v. Usha Martin Industries 1994 (94) ELT: 6; Ranadey Micronutrients V. CCE : ; Collector of Central Excise, Bombay v. Jayant Dalal (P) Ltd. 8: 8; Collector of Central Exrise, Bombay v. Kores India Ltd. 3; 3; Paper Products Ltd. v. Collector of Central Excise : ; Dabur India Ltd. V. CCF, Meerut 8.

10. **The somewhat different approach in M/s. Hindustan Aeroneutics V. Commissioner of Income Tax, Karnataka, Bangalore 2000 (5) SCC 365 by two learned Judges of this Court, apart from being contrary to the stream of authority cannot be taken to have laid down good law in view of the subsequent decision of the Constitution Bench in Collector of Central Excise, Vadodara Vs. Dhiren Chemical Industries.** # After this Court had construed an exemption notification in a particular manner, it said:

"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 phase, that interpretation will be binding upon the Revenue" * .

11. Despite the categorical language of the clarification by the Constitution Bench, the issue was again sought to be raised before a Bench of three Judges in Central Board of Central Excise,

Vadodara Vs. Dhiren Chemicals Industries: 1 where the view of the Constitution Bench regarding the binding nature of circulars issued under Section 37B of the Central Excise Act, 1944 was reiterated after it was drawn to the attention of the Court by the Revenue that there were in fact circulars issued by the Central Board of Excise and Customs which gave a different interpretation to the phrase as interpreted by the Constitution Bench. The same view has also been taken in Simplex Castings Ltd. v. Commissioner of Customs, Vishakhapatnam 6.

The Principles laid down by all these decisions are :

(1) Although a circular is not binding on a Court or an assessee, it is not open to the Revenue to raise the contention that is contrary to a binding circular by the Board. When a circular remains in operation, the Revenue is bound by it and cannot be allowed to plead that it is not valid nor that it is contrary to the terms of the statute.

(2) Despite the decision of this Court, the Department cannot be permitted to take a stand contrary to the instructions issued by the Board.

(3) A show cause notice and demand contrary to existing circulars of the Board are ab initio bad.

(4) It is not open to the Revenue to advance an argument or file an appeal contrary to the circulars.

12. As we have noted the provisions of Section 151A are in pari materia with the provisions of S. 119 of the Income Tax Act 1961 and Section 37B of the Central Excise Act. Parliament introduced Section 151A by an amendment to the Customs Act, 1962 in 1995 but with effect from 27th December, 1985 (Act 80 of 1995), when this Court had already construed identical language in the manner indicated. It may be assumed that Parliament had legislatively approved the construction by using the exact words so construed again in the Customs Act. There is, therefore, no reason why the principles enunciated by this Court under the two earlier Acts should not also be determinative of the construction put on the later in respect of a materially similar statutory provision. This was also not argued by the appellant.

13. During the period in question, the following circular had been issued by the Central Board of Excise and Customs with regard, inter alia to demurrage charges:

"Subject : Demurrage charges and dispatch money not to form part of the assessable value-Regarding.

*The Kandla Customs Act, 1962. Pursuant to the decision taken in the Tariff Conference of Collector held in August 1981, the issue was further discussed in the Tariff Conference of February 1989. The Conference had desired that the matter may be re-examined in its totality especially in the context of current valuation principles based on the GATT Valuation at Goa on 4th and 5th April, 1991 examined the problem posed in entirety. The Conference came to the conclusion that in the past-despatch money and demurrage would not constitute element of value since it is not an element for the carriage. These moneys are in the nature of penalties or rewards by virtue of a contract of charter agreement between the carrier and the charter and this in no way could be conceived as being part of the freight or for that matter part of the price actually paid or payable for the goods. **

Having regard to the above and the fact that in no other Custom House there was a practice to

include or deduct such moneys, it has been decided that 'demurrage' and 'despatch' money may not form a part of assessable value". *

14. **The Circular in no uncertain terms excludes demurrage from the assessable value. In the light of the judicial principles enunciated earlier, it was not open to the appellant to either issue the show cause notice or contend otherwise. The demand based on an assessable value inclusive of demurrage cannot be sustained as long as the circular remained operative and as long as the decisions cited earlier remain good law.** #

15. The submission of the appellant in this context is that the respondent had not acted on the basis of the circular and therefore the principle of promissory estoppel did not apply. the submission is misconceived. The circulars issued by the CBDT under the Income Tax Act, 1961 and the CNEC under Section 37(B) of the Central Excise Act, 1944 have been held to be binding primarily on the basis of the language of the statutory provisions buttressed by the need of the adjudicating officers to maintain uniformity in the levy of tax/duty throughout the country.

16. It is then submitted that the CEGAT had itself held that the demurrage charges were pre-landing charges and hence includible in the assessable value in Panch Mahal Vs. Collector of Customs Rajkot 1996 Indlaw CEGAT 75. It is submitted that the law laid down by the Tribunal which became final for want of appeal would have to be followed otherwise there would be a chaotic situation. Reliance has also been made on the decision of this Court in Hindustan Aeronautics (supra).

17. **We have already noted that Hindustan Aeronautics does not represent the correct law. The submission of the appellant is directly contradictory to the principles laid down by the series of decisions noted earlier and the attempt on the part of the appellant to distinguish the long line of authority is unacceptable.** #

18. The decision in Panch Mahal (supra) does not allow an adjudicating officer to act in violation of the Circular issued under Section 151A. Incidentally the decision in Panch Mahal (supra) was an ex-parte one in the sense that the importer was not represented when the matter was argued. Its failure to prefer an appeal could not in the circumstances mean that the issue had become final as far as all other importers are concerned. Moreover, there was no reference to the Circular nor any reason for coming to the conclusion that demurrage was includible in the value of the imported goods.

19. We may mention here that the stand of the appellant that this Court had taken the view that demurrage was includible in Garden Silks (supra) both in the adjudication order and before the Tribunal appears to have been abandoned, in our opinion rightly, in the written notes of submission. Apart from the decision of the Constitution Bench in Dhiren Chemicals (supra), Garden Silks (supra) was a decision on landing charges. It did not construe the 1988 Rules. The circular on the other hand was issued on a re-examination of the issue in the light of the GATT Valuation principles as incorporated in the 1988 Rules.

20. **In this view it is not necessary for us to determine the further issue whether in the absence of Board circulars, demurrage would still be includible in the assessable value of the imported goods. For the purposes of these appeals, it is sufficient to hold, as we do, that demurrage was wrongly included by the adjudicating officer in the assessable value contrary to the directive of the CNEC at a time when the circular had not been withdrawn.** #

21. For the reasons aforesaid, the appeals are dismissed with costs.

Hon'ble Justice P. Venkatarama Reddi

I am in agreement with my learned sister that without entering into the merits of the contentions advanced, the Revenue's appeal is liable to be dismissed in the light of the Circular dated 14.8.1991 issued by Central Board of Excise and Customs which is traceable to the power conferred on the Board by Section 151-A of the Customs Act. The purpose of this separate opinion is only to highlight certain doubts I have entertained as to the correctness of the proposition laid down in the two Dhiren Chemical Industries cases-one decided by the Constitution Bench and the other by a three Judge Bench. The absence of reasoning in both these decisions has aggravated my doubts and made me ponder over the possible implications of the said judgments. Hence I felt impelled to express the thought passing in my mind and my prima facie views, hoping that the legal position will perspicuously be laid down by a Constitution Bench sooner or later. For the time being, I have refrained from persuading my learned Sister to refer the matter to a larger Bench as the decision in the instant case need not rest on the principle enunciated in the said two decisions.

2. **I have no reservations in accepting the principle that the circulars issued by the Board under Section 151 (A) of the Customs Act or Section 37 (B) of the Central Excise Act are generally binding on the Revenue. Normally, the instructions issued by the superior authorities on administrative side cannot fetter the exercise of quasi judicial power and the statutory authority invested with such power has to act independently in arriving at a decision under the Act #** (vide: Sirpur Paper Mills Ltd. Vs. Commissioner of Wealth Tax, Hyderabad [ ]. **However, when there is a statutory mandate to observe and follow the orders and instructions of the Board in regard to specified matters, that mandate has to be complied with. It is not open to the adjudicating authority to deviate from those orders or instructions which the statute enjoins that it should follow. It any order is passed contrary to those instructions the order is liable to be struck down on that very ground. #** That is what has been held in some of the cases referred to by my learned sister. **Extending this principle which flows from the statutory provision contained in Section 151 (A) of the Customs Act or a pari-materia provision in other fiscal enactments, this Court also held that it is not open to the department to file an appeal against the order passed in conformity with the circular. To this extent I have no difficulty in understanding the rationale of the decisions of this Court leaving apart for the time being the decisions in which a somewhat different note was struck. However, I am unable to reconcile myself to the view that even after the highest Court settles the law on the subject, the view expressed by the Central Board on the same point of law should still hold the field until and unless it is revoked. #**

3. As is evident from Section 151-A the Board is empowered to issue orders or instructions in order to ensure uniformity in the classification of goods or with respect to levy of duty. The need to issue such instructions arises when there is a doubt or ambiguity in relation to those matters. The possibility of varying views being taken by the customs officials while administering the Act may being about uncertainty and confusion. In order to avoid this situation, Section 151A has been enacted on the same lines as Section 37(A) of the Central Excise Act. **The apparent need to issue such circulars is felt when there is no authoritative pronouncement of the Court on the subject. Once the relevant issue is decided by the Court at the highest level, the very basis and substratum of the circular disappears. The law laid down by this Court will ensure uniformity**

in the decisions at all levels. By an express constitutional provision, the law declared by the Supreme Court is made binding on all the Courts within the territory of India (vide Article 141). Proprio vigore the law is binding on all the tribunals and authorities. # Can it be said that even after the law is declared by the Supreme Court the adjudicating authority should still give effect to the circular issued by the Board ignoring the legal position laid down by this Court? Even after the legal position is settled by the highest Court of the land, should the customs authority continue to give primacy to the circular of the Board? Should Section 151(A) be taken to such extremities? Was it enacted for such purpose? Does it not amount to transgression of constitutional mandate while adhering to a statutory mandate? Even after the reason and rationale underlying the circular disappears, is it obligatory to continue to follow the circular? These are the questions which puzzle me and these are the conclusions which follow if the observations of this Court in the two cases of Dhiren Chemical Industries are taken to their logical conclusion.

4. **I am of the view that in a situation like this, the Customs authority should obey the constitutional mandate emanating from Article 141 read with Article 144 rather than adhering to the letter of a statutory provision like Section 151-A of the Customs Act. The Customs authority should act subservient to the decision of the highest constitutional Court and not to the circular of the Board which is denuded of its rationale and substratum under the impact of the authoritative pronouncement of the highest Court. Alternatively, Section 151A has to be suitably read down so that the circulars issued would not come into conflict with the decision of this Court which the Customs authorities are under a Constitutional obligation to follow. #**

5. **I can perceive of no principle or authority to countenance the view expressed in Dhiren Chemicals case that regardless of the interpretation placed by this Court, the Circulars which give a different interpretation would still survive and they have to be necessarily followed by the statutory functionaries. The opinion expressed in the case of Hindustan Aeronautics Vs. Commissioner of Income Tax, Karnataka [(2000) 5 SCC 365] seems to project a correct view, though that decision cannot prevail over the Constitution Bench decision in Dhiren Chemical Industries. #** The unintended results that may follow from the verdict of this Court in Dhiren Chemical Industries is another aspect that has worried me. Let us take a case where in accordance with the instructions in the Circular of the Board, the adjudicating authority has to decide the case against the assessee, but as per the decision of this Court, the Assessee's contention has to be accepted by the adjudicating authority. If the proposition laid down in Dhiren Chemical Industries has to be followed, the adjudicating authority should pass an order in terms of the Circular holding the issue in favour of Revenue, knowing fully well that on a challenge by the assessee, it is liable to be set aside in appeal. The assessee will then be driven to file an appeal to get rid of an obviously illegal order. Is it all contemplated by Section 151-A?

6. As far as the present case is concerned, there is no direct decision of the Supreme Court which has taken a view different from what was expressed in the Circular of 1991. As clarified by my learned sister, the decision of this Court in Garden Silks case has no direct bearing on the issue involved in this case. It did not construe the 1988 rules. Hence, the doubts expressed by me in regard to the correctness of the principle laid down in Dhiren Chemical Industries case need to necessarily be resolved in the instant case. Still, the observation in Dhiren Chemical Industries was sought to be pressed into service to counter the contention of the appellant that a cloud has been cast on the Circular in the wake of the Tribunal's order in Panchmahal Steel case and therefore the Circular had been eclipsed. Whether the Tribunal's order stands on the same footing as the decision

of this Court, insofar as its impact on the Circular is concerned is one aspect which will have to be considered in an appropriate case. Here, that issue need not be probed further. I agree with my learned sister that the order of the Tribunal being an exparte one, it does not take precedence over the binding circular under Section 151-A and I may add that the Tribunal's decision is not so categorical and clear as to strike at the rule of the Circular in its application to the facts of the present case. Hence, there is no need for further discussion on this point.

7. Before parting, I would like to point out that the basis on which the circulars of the Central Board are placed on a high pedestal seems to have its origin in Navnit Lal's case]. In that case, a Constitution Bench of this Court was examining the constitutional validity of Sections 2, 6A(e) and 12(1B) inserted in the Income Tax Act of 1922 by the Finance Act of 1955. These Sections provided that any payment made by a closely held Company to its shareholder by way of advance or loan to the extent to which the Company possessed accumulated profits shall be treated as divided taxable under the Act and this would include any loan or advance made in the relevant year prior to the assessment year, 1955-56, if such loan or advance remained outstanding on the 1st day of the previous year relevant to the assessment year 1955-56. In order to mitigate the rigour of the provision to some extent, the Central Board of Revenue issued a circular under Section 5(8) of the Act to the effect that if any such outstanding loans or advances of past years were repaid on or before 30th June, 1955, they would not be taken into account in determining the tax liability of the shareholders who received such loans or advances. The Court after pointing out that the circular would be binding on all officers and persons employed in the execution of the Act, observed thus:

"In order words, past transactions which would normally have attracted the stringent provisions of Section 12(1B) as it was introduced in 1955, were substantially granted exemption from the operation of the said provisions by making it clear to all the companies and their shareholders that if the past loans were genuinely refunded to the companies, they would not be taken into account under Section 12(1B)." *

8. No proposition was laid down in that case that even if the circular was clearly contrary to the provisions of the Act it should prevail, On the other hand, the learned Judges were inclined to view the circular as granting the benefit of exemption from the operation of the impugned provisions subjects to fulfillment of certain conditions. Navnit Lal's case was referred to and construed in two cases decided by Benches of two learned Judges. The first one was the case of Ellerman Lines Ltd. Vs. Commissioner of Income Tax, West Bengal] and the other is K.P. Varghese Vs. I.T. Officer, Ernakulam]. In both these cases it was assumed that Navnit Lal's case was an authority for the proposition that even if the directions given in the circular clearly deviate from the provisions of the Act, yet, the Revenue is bound by it. These three decisions were repeatedly referred to and relied on in the subsequent decisions in which the issue arose as regards the binding nature of the circulars either under the Income Tax Act or under the Central Excise Act. In between, there was the three Judge Bench decision in Sirpur Paper Mills Ltd. Vs. Commissioner of Wealth Tax [ ] in which Section 13 of the Wealth Tax Act corresponding to Section 5(8) of the Income Tax Act, 1922 fell for consideration. This Court took the view that the instructions issued by the Board may control the exercise of the power of the departmental officials in matters administrative but not quasi-judicial. There is yet another decision of a three Judge Bench which seems to make a dent on the weight of the proposition that the circulars of the Board, even if they are plainly contrary to the provisions of the Act, should be given effect to and binding on the authorities concerned in the administration of the Act. The is the case of Keshavji Ravji & Co. Vs. I.T. Commissioner [ ]. Venkatachaliah, J (as he then was) speaking for the Court observed thus:

"Sri Ramachandran contended that circular of 1965 of the Central Board of Direct Taxes was binding on the authorities under the Act and should have been relied upon by the High Court in support of the Court's construction of Section 40(b) to accord with the understanding of the provision made manifest in the circular.

This contention and the proposition on which it rests, namely, that all circulars issued by the Board have a binding legal quality incurs, quite obviously, the criticism of being too broadly stated. The Board cannot preempt a judicial interpretation of the scope and ambit of a provision of the 'Act' by issuing circulars on the subject. This is too obvious a proposition to require any argument for it.....

*The Tribunal, much less the high Court, is an authority under the Act. The circulars do not bind them. But the benefits of such circulars to the assesses have been held to be permissible even though the circulars might have departed from the strict tenor of the statutory provisions and mitigated the rigour of the law. But that is not the same thing as saying that such circulars would either have a binding effect in the interpretation of the provision itself or that the Tribunal and the High Court are supposed to interpret the law in the light of the circular. There is, however, support of certain judicial observations for the view that such circulars constitute external aids to construction. ..." **

9. In Bengal Iron Corporation Vs. C.T.O. [ ] a two Judge Bench considered the effect of a G.O. issued by the State Government clarifying that cast iron castings fall within sub-item (i) of item No. 2 of the iii schedule of A.P. General Sales Tax Act. The assessee's contention that the benefit should be given in terms of the said G.O. was not accepted by this Court. This is what the Court said at para 19.

*"Now coming to G.O. Ms. 383, it is undoubtedly of a statutory character but, as explained hereinbefore the power under Section 42 cannot be utilized for altering the provisions of the Act but only for giving effect to the provisions of the Act. Since the goods manufactured by the appellant are different and distinct goods from cast iron, their sale attracts the levy created by the Act. In such a case, the government cannot say, in exercise of its power under Section 42(2) that the levy created by the Act shall not be effective or operative. In other words, the said power cannot be utilized for dispensing with the levy created by the Act, over a class of goods or a class of persons, as the case may be. For doing that, the power of exemption conferred by Section 9 of the A.P. Act has to be exercise." **

10. In C.S.T. Vs. Indra Industries [0] a three Judge Bench referred to the above/case and purported to distinguish it as follows:

*"The observations in para 18 of the judgment in Bengal Iron Corpn. at best, apply only when a case of estoppel against a statute is made out." **

11. In Wilh, Wilhelmsen Vs. C.I.T. [6] a two Judge Bench having referred to Section 5(8) of I.T. Act, 1922 observed thus:

*"The provision is clear. It requires no elaboration. It is, however, evident that the power so conferred on Central Board of Revenue has to be exercised for the purpose of an within the four corners of the Act." **

12. **I have referred to these cases to demonstrate that a common thread does not run through the decisions of this Court. The dicta/observations in some of the decisions need to be reconciled or explained. The need to redefine succinctly the extent and parameters of the binding character of the circulars of Central Board of Direct Taxes or Central Excise looms large. It is desirable that a Constitution Bench hands down an authoritative pronouncement on the subject. #**