

**SUPREME COURT OF INDIA**

Commissioner of Central Excise

Vs.

Hindoostan Spinning & Wvg. M. Ltd.

C.A.No.5848 of 2006

(Dr. Arijit Pasayat J.)

16.04.2009

**ORDER**

**Dr.Arijit Pasayat, J.**

1. Heard learned counsel for the parties.
2. By order dated 12.12.2006 this court had directed that the present matter be placed for disposal after the decision of this Court in CCE v. Ratan Melting & Wire Industries, which had been referred to a larger bench. The larger bench has rendered its judgment in the matter on 14.10.2008 which is reported in Commissioner of Central Excise, Bolpur v. Ratan Melting & Wire Industries [2008 1 (13) SCC 1].
3. On a reference made by a Bench of three Judges in Commissioner of Central Excise, Bolpur v. Ratan Melting and Wire Industries, Calcutta (2005 (3) SCC 57), these matters were placed before the Five Judge 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 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:

"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.”

4. 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:

“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 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*.”

5. 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. Accordingly the reference was made.

6. In answering the reference, it was held as follows:

“Circulars and instructions issued by the Board 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 the State

Government 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 no existence in law.

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 submissions of learned counsel for the assessee are accepted, it 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 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 Constitution.

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

7. Without going into the merits, the present matter is remanded to be decided by the CESTAT, Mumbai, keeping in view the applicability and/or relevance of Ratan Melting's case (supra).
8. All contentions are left open to the parties.
9. The Civil appeal and all interim applications are disposed of accordingly.