SUPREME COURT OF INDIA

Commissioner of Central Excise, Jaipur-II

Vs.

Super Synotex (India) Ltd.

C.A.Nos.9154-9156 of 2003

(Anil R.Dave and Dipak Misra JJ.)

28.02.2014

JUDGMENT

DIPAK MISRA, J.

1. Leave granted in Special Leave Petition (C) No. 16248 of 2009.

2. This batch of appeals preferred under Section 35L of the Central Excise Act, 1944 (for brevity, the Act) being inter-connected and inter-linked was heard together and is disposed of by a common judgment. It is necessary to clarify that the Revenue has preferred the appeals against the decisions rendered by the Customs, Excise & Gold (Control) Appellate Tribunal (for short "the Tribunal") at various Benches whereby the assessee-manufacturers have been extended the benefit of deduction of excise duty in respect of sales tax imposed by the State Government but not entirely paid to the State exchequer while determining the assessable value for the purpose of central excise, and some of the assessee-manufacturers have preferred appeals being grieved by the rejection for grant of similar relief pertaining to the payment made under the Central Sales Tax Act. For the sake of convenience, the facts from Civil Appeal Nos. 9154-9156 of 2003 are adumbrated herein as far as appeals by the Revenue are concerned. In respect of the challenge made by the assessee-manufacturers we shall take the facts from Civil Appeal No. 4621 of 2008.

3. First we shall advert to the issue involving the appeals preferred by the Revenue. The respondent herein is engaged in the manufacture of yarn of manmade fibers falling under Chapter 55 of the Schedule to the Central Excise Tariff Act, 1985,

chargeable to duty. A show-cause notice was issued to the respondent-assessee on the ground that for certain period it had contravened the various provisions of the Act, and the Central Excise Rules, 1944 which had resulted in evasion of Central Excise Duty. The fulcrum of the show-cause notice was that the assessee had not paid the duty on the additional consideration collected towards the sales tax. The case of the Revenue was that though the assessee was availing exemption from payment of sales tax, it was showing sales tax in the invoices but assessable value was shown separately for payment of Central Excise Duty as a consequence of which the net yarn value was invariably higher than the assessable value and excise duty paid thereon. This led to the difference between the two amounts which was almost equal to the amount of sales tax applicable during the relevant time. The explanation of the assessee was that it was extended the benefit of the incentive scheme and not granted any exemption and, therefore, the sales tax collected was not includible in the assessable value and deduction was admissible under the Act.

4. The Commissioner of Excise repelled the stand of the assessee, interpreted the benefit granted to the assessee as partial exemption and, taking certain other facts into consideration, came to hold that the assessee had deliberately with an intent to evade payment of duty had suppressed the fact that though it was availing partial sales tax exemption under the Sales Tax Incentive Scheme of 1989 for the relevant period upto 75% of tax liability, yet it was paying only 25% of the tax leviable despite collecting additional consideration to the extent of the amount of sales tax and, therefore, the additional amount collected under the camouflage of incentive tax had to be taken note of and, accordingly, price was to be declared and formed as a part of the value for the levy of excise duty.

5. Be it noted, in its reply the assessee had placed reliance on C.B.E. & C Circular No. 378/11-98-CX dated 12.3.1998 and claimed that one of the situations as stipulated therein covered the likes of the assessee and hence, it was not liable to be fastened with any further liability. The Commissioner distinguished the said circular and came to hold that the assessee, with an intention to evade payment of duty, had wilfully suppressed the facts that it was availing partial exemption of sales tax and collecting additional consideration to the extent of the amount of sales tax not payable by it. In this backdrop, the Commissioner treated it as short payment by the assessee and directed for recovery of duty and imposed penalty under Sections 11A, 11AC and 11AB of the Act and further imposed penalty on the persons responsible for the said suppression and evasion.

6. Being grieved by the order passed by the Commissioner of Central Excise, Jaipur, the assessee preferred three appeals, namely, Appeal NO. E/2279-2281 of 2002. The Tribunal posed the question whether the assessee was entitled to claim deduction under Section 4(4)(d)(ii) of the Act in respect of full amount of sales tax payable at the rate of 2%. The Tribunal took note of the fact that the assessee, being entitled for the benefit under the Sales Tax New Incentive Scheme for Industries, 1989 (for short "the Scheme"), had availed the same with effect from 3.12.1996 and under the said Scheme it was entitled to retain with it 75% of the sales tax collected and pay only 25% to the Government and, accordingly claimed the deduction for the entire amount of sales tax payable at the rate of 2% and, accordingly, it did not approve the view adopted by the adjudicating authority that the benefit granted to the assessee in respect of the sales tax was in the nature of an exemption and not an incentive and, therefore, not deductible under Section 4(4)(d)(ii) of the Act. The Tribunal referred to the circular dated 12.3.1998 issued by the Central Board of Excise and Customs (CBEC) and came to hold that sales tax was deductible from the wholesale price for determination of assessable value under Section 4 of the Act for levy of Central Excise Duty. Being of this view, it set aside the order passed by the Commissioner of Excise and directed for refund of the deposits made during investigation and the deposit made in pursuance of the order passed by the Tribunal.

7. We have heard Mr. K. Radhakrishnan, learned senior counsel, appearing for the Revenue and learned counsel appearing for the respondents in the appeals preferred by the Revenue.

8. Mr. Radhakrishnan, learned senior counsel, questioning the legal pregnability of the impugned order, has contended that the tribunal has clearly erred in applying the circular dated 12.3.1998 as the stipulations in the said circular do not cover the cases of the present nature inasmuch as the assessee was extended the benefit of incentive scheme. It is his further stand that in the obtaining circumstances sales tax was collected but not paid to the State exchequer and, therefore, it would be includible in assessable value. Learned senior counsel would contend that the Tribunal has not dealt with the issue pertaining to "payable", for the issue of "payability" depends on the language employed in the statute. Mr. Radhakrishnan has urged that, in any case, after the amendment has come into force effecting "transaction value" under Section 4(3)(d) of the Act with effect from 1.7.2000 there is a schematic change but unfortunately the same has not been addressed to by the tribunal which makes the order absolutely vulnerable. He has commended

us to the decision in Modipon Fibre Company, Modinagar, U.P. v. Commissioner of Central Excise, Meerut[1].

9. Learned counsel appearing for the assessee submitted that the order passed by the tribunal is absolutely inexceptionable inasmuch as it has correctly applied the circular issued by the CBEC and the respondent being exempted under the incentive scheme issued by the State Government is entitled to avail the benefit. He has commended us to the Scheme issued by the State Government and brought on record the assessment orders passed by the sales tax authorities. Learned counsel would further submit that as per the Scheme they are entitled to retain 75% of the sales tax collected and pay only balance 25% to the State Government and despite the same being the admitted position, the adjudicating authority has committed grave illegality by treating it as an exemption which has been appositely corrected by the tribunal and hence, the order impugned is impeccable. It is propounded that the amended provision that came on the statute book with effect from 1.7.2000 does not change the situation and, in fact, the earlier circular on principle has been reiterated by the subsequent circular dated 9.10.2002.

10. Having regard to rivalised submissions raised at the Bar, we deem it appropriate to first refer to the ratio and principle stated in Modipon Fibre Company (supra). In the said case, the show cause notice was dated 19th March, 1999 and related to the period March, 1994 to March, 1997. Section 4(4)(d)(ii) as applicable was as under:-

> "4. Valuation of excisable goods for purposes of charging of duty of excise.—(1) to (3) * * *
>
> (4) For the purposes of this section,—
>
> (a) to (c) * * *
>
> (d) 'value', in relation to any excisable goods,—
>
> (i) * * *
>
> (ii) does not include the amount of the duty of excise, sales tax and other taxes, if any, payable on such goods and, subject to such rules as may be made, the trade discount (such discount not being refundable on any account whatsoever) allowed in accordance with the normal practice of the

wholesale trade at the time of removal in respect of such goods sold or contracted for sale;

Explanation.—For the purposes of this sub-clause, the amount of the duty of excise payable on any excisable goods shall be the sum total of—

(a) the effective duty of excise payable on such goods under this Act; and

(b) the aggregate of the effective duties of excise payable under other Central Acts, if any, providing for the levy of duties of excise on such goods under each Act referred to in Clause (a) or Clause (b) shall be,—

(i) in a case where a notification or order providing for any exemption [not being an exemption for giving credit with respect to, or reduction of duty of excise under such Act on such goods equal to, any duty of excise under such Act, or the additional duty under Section 3 of the Customs Tariff Act, 1975 (51 of 1975), already paid on the raw material or component parts used in the production or manufacture of such goods] from the duty of excise under such Act is for the time being in force, the duty of excise computed with reference to the rate specified in such Act, in respect of such goods as reduced so as to give full and complete effect to such exemption; and

(ii) in any other case, the duty of excise computed with reference to the rate specified in such Act in respect of such goods."

11. The contention of the assessee was that they were entitled to deduction in respect of Turnover Tax (TOT) at the rate of 2% though Government of Gujarat by notification dated 19th October, 1993 had exempted sale of yarn under certificate in Form 26 to the extent of TOT exceeding .5% of the total turnover if the processed yarn was sold in the State of Gujarat. Thus, there was dual rate of 2% and .5% TOT in the State of Gujarat, with the lower rate being applicable to sales in backward area. Relying upon the word/expression "payable" used in Section 4(4)(d)(ii), it was submitted by the assessee that it refers to the duty payable in the tariff and not any concession or exemption. The contention was rejected by the Court observing that the word "payable" was descriptive and one has to see the context in which the said word finds place and accordingly proceeded to opine: -

"As can be seen from the abovequoted section, excise duty can be deducted if it had not been included in the invoice price. According to the

> Explanation, what is deductible is the effective rate of duty. Where any exemption has been granted, that exemption has to be deducted from the ad valorem duty. In other words, it is only the net duty liability of the assessee that can be deducted in computing the assessable value. The said principle stands incorporated in the Explanation. For example, if the assessee recovers duty at the tariff rate but pays duty at concessional rate, then excise duty has to be a part of the assessable value. Similarly, refund of excise duty cannot be treated as net profit and added on to the value of clearances. There is no provision in Section 4 of the 1944 Act to treat refund as part of assessable value. If excise duty paid to the Government is collected at actuals from the customers and if, subsequently, exemption becomes available, such excise duty which is not passed on to the assessee (sic customer), would become part of assessable value under Section 4(4)(d)(ii).”

12. The aforesaid observations were made in the context of TOT which could be deducted, if it had not been included in the invoice price. The excise duty, it was observed, was the effective rate of duty and where any exemption was granted, the exemption was to be deducted from ad valorem duty. Only the net duty liability of the assessee was to be reduced from the invoice price for computing the assessable value. Thus, where an assessee had recovered duty at a higher rate but was paying duty at a concessional rate, then that part of unpaid excise duty was to be part of taxable or assessable value. But refund of excise duty was not to be added to the value of clearances and similarly if subsequently an exemption had become available it could not be reduced to lower to the assessable value.

13. After so stating the bench referred to the decisions of the Bombay High Court in Tata Oil Mills Co. Ltd. v. Union of India[2] and B.K. Paper Mills Pvt. Ltd. v. Union of India[3] and approving the principle laid down therein, observed thus: -

> “In our view, the above two judgments of the Bombay High Court lay down the correct principle underlying the Explanation to Section 4(4)(d)(ii). As held in TOMCO case the exemption was not by way of a windfall for the manufacturer assessee but on account of cotton seed oil used by TOMCO in the manufacture of Pakav. Similarly, in B.K. Paper Mills the Bombay High Court has correctly analysed Section 4(4)(d)(ii) with the Explanation to say that only the reduced rate of duty can be excluded from the value of the goods and that Explanation explains what was implicit in that section. That, the said Section 4(4)(d)(ii) did not refer to duty leviable under the relevant tariff entry without reference to exemption notification that may be in

existence at the time of clearance/removal. That, Section 47 of the Finance Act, 1982 which inserted the Explanation expressly sets out what is meant by the expression "the amount of duty of excise payable on any excisable goods". By the amount of duty of excise what is meant is the effective duty of excise payable on such goods under the Act and, therefore, effective duty of excise is the duty calculated on the basis of the prescribed rate as reduced by the exemption notification. This alone is excluded from the normal price under Section 4(4)(d)(ii)."

After so stating the Court stated: -

Therefore, the test to be applied is that of the "actual value of the duty payable" and, therefore, there is no merit in the argument advanced on behalf of the assessee that the Explanation is restricted to the duty of excise. This principle can therefore apply also to actual value of any other tax including TOT payable. Even without the Explanation, the scheme of Section 4(4)(d)(ii) shows that in computing the assessable value, one has to go by the actual value of the duty payable and, therefore, only the reduced duty was deductible from the value of the goods.

14. It is seemly to note that the Court approved the ratio laid down in the judgment of Bombay High Court in Central India Spinning Weaving and Manufacturing Co. Ltd. v. Union of India[4] by reproducing the following observations: -

"9. … It is true that according to Section 4(4)(d)(ii) of the Central Excise Act, the value does not include the amount of duty of excise, if any payable on such goods, but in view of Explanation to Section 4(4)(d)(ii), the 'duty of excise' means the duty payable in terms of the Central Excise Tariff read with exemption notification issued under Rule 8 of the Central Excise Rules. In this view of the matter, the only deduction that is permissible is of the actual duty paid or payable while fixing the assessable value. Thus, where the company/manufacturer whose goods were liable to excise duty at a reduced rate in consequence of an exemption notification, while paying duty at reduced rate collected duty at a higher rate i.e. tariff rate from its customers the authorities were justified in holding that what was being collected by the company as excise duty was not excise duty but the value in substance of the goods and, therefore, the excess value collected by the petitioner from the customers was recoverable under Section 11-A of the Central Excises and Salt Act, 1944."

> After explaining as aforesaid the Court ruled that though in respect of backward areas sales, the rate of TOT was .5%, whereas TOT rate in normal area sales was 2%, yet the assessee had suppressed the aforesaid data to claim TOT deduction @ 2% to compute the assessable value on the entire sales including sales made in backward area. This was wrong and the department was justified in calling upon the assessee to pay the differential excise duty.

15. The Court in the said decision has observed that by claiming higher deduction @ 2% instead of .5%, the assessee was gaining a windfall and this was not justified. It was further observed that TOMCO's case was decided on 24th July, 1980 and at that time there were conflicting decisions and thereafter the Legislature had inserted explanation to Section 4(4)(d)(ii) of the Act by using the words "the effective duty of excise payable on goods under this Act".

16. In the case at hand, the assessee has claimed that there is difference between grant of incentive and extension of benefit of exemption, and the scheme, i.e., the "Rajasthan Sales Tax Incentive Scheme 1989" does not relate to exemption but incentive. To elaborate, the assessee, under the said Scheme, is permitted to retain 75% of the sales tax collected as incentive and is liable to pay 25% to the department. 75% of the amount retained has been treated as incentive by the State Government. It is pointed out that such retention of sales tax is a deemed payment of sales tax to the State exchequer and for the said purpose reliance is placed on Circular No. 378/11/98-CX dated 12.3.1998 issued by C.B.E.C.

17. In the aforesaid circular, three situations were envisaged, viz., (i) exemption from payment of sales tax for a particular period; (ii) deferment of payment of sales tax for a particular period; and (iii) grant of incentive equivalent to sales tax payable by the unit. The aforestated three situations had been examined by the Board in consultation with the Ministry of Law. As far as situation (iii) is concerned, the circular stated thus: -

> "6. Examination of the situation, mentioned above in para 2(ii) & (iii), in the referring note give an indication that sales tax is payable by the assessee in both the situations. It is payable after a particular period in the second case. On the other hand, in the third situation, the sales tax is considered payable by the assessee even though it is paid by the State Government, the assessee keeping the said amount as cash incentive. In this situation sales tax would

be considered as payable within the meaning of the provisions of Section 4(4)(d)(ii) of the Act.

7. We are therefore, of the opinion that in the category of cases mentioned in para 2(i), sales tax is not deductible whereas in the category of cases mentioned at (ii) and (iii) sales tax is deductible from the wholesale price for determination of assessable value under Section 4 of the Act for levy of Central Excise duty."

18. To understand the purpose of the aforesaid two paragraphs it is also necessary to refer to the note given by the Board seeking opinion of the Ministry of Law in respect of situation (iii) which is a part of the said circular. It reads as follows: -

"In situation (iii), the manufacturer collects the sales tax from the buyers and retains the same with him instead of paying it to the State Government. The State Government on the other hand grants a cash incentive equivalent to the amount of sales tax payable and instead of the case incentive being paid to the manufacturer, is credited to State Government account as payment towards sales tax by the manufacturer. In such a situation sales tax is also considered payable by the assessee within the meaning of the provisions of Section 4(4)(d)(ii) of the Central Excise Act, 1944. Therefore, sales tax is deductible from the wholesale price for determination of assessable value for levy of Central Excise duty in category of cases mentioned in para (ii) & (iii) above."

19. On perusal of the assessment orders brought on record, it is quite clear that in pursuance of the Scheme 75% of the sales tax amount was credited to the account of the State Government as payment towards sales tax by the manufacturer. On a studied scrutiny of the scheme we have no scintilla of doubt that it is a pure and simple incentive scheme, regard being had to the language employed therein. In fact, by no stretch of imagination, it can be construed as a Scheme pertaining to exemption. Thus, analysed, though 25% of sales tax is paid to the State Government, the State Government instead of giving certain amount towards industrial incentive, grants incentive in the form of retention of 75% sales tax amount by the assessee. In a case of exemption, sales tax is neither collectable nor payable and if still an assessee collects any amount on the head of sales tax, that would become the price of the goods. Therefore, an incentive scheme of the present nature has to be treated on a different footing because the sales tax is collected and a part of it is retained by the assessee towards incentive which is

subject to assessment under the local sales tax law and, as a matter of fact, assessments have been accordingly framed. In this factual backdrop, it has to be held that circular entitles an assessee to claim deduction towards sales tax from the assessable value. The fact situation in Modipon Fibre Company (supra), as is manifest, was different. In our considered opinion what has been stated in Modipon Fibre Company (supra) cannot not be extended to include the situation (iii). We are inclined to think so as the definition of term "value" under Section 4(4)(d) was slightly differently worded and the CBEC had clarified the same in the circular dated 12.3.1998 and benefits were granted.

20. The question that would still remain alive is that what would be the effect of amendment of Section 4 which has come into force with effect from 1.7.2000. The Section 4(3)(d) which defines "transaction value", reads as follows: -

> "4. Valuation of excisable goods for purposes of charging of duty of excise. –
>
> (1) & (2) * *
>
> (3) For the purposes of this section, -
>
> (a) to (cc) * * *
>
> (d) "transaction value" means the price actually paid or payable for the goods, when sold, and includes in addition to the amount charged as price, any amount that the buyer is liable to pay to, or on behalf of, the assessee, by reason of, or in connection with the sale, whether payable at the time of the sale or at any other time, including, but not limited to, any amount charged for, or to make provision for, advertising or publicity, marketing and selling organization expenses, storage, outward handling, servicing, warranty, commission or any other matter; but does not include the amount of duty of excise, sales tax and other taxes, if any, actually paid or actually payable on such goods."

21. After the substitution of the old Section 4 of the Act by Act 10 of 2000 as reproduced hereinabove, the Central Board of Excise and Customs, New Delhi, issued certain circulars and vide circular No. 671/62/2000-CX dated 9.10.2002 clarified the circular issued on 1.7.2000. In the said circular reference was made to the earlier circular No. 2/94-CX 1 dated 11.1.1994. It has been observed in the

circular that after coming into force of new Section 4 with effect from 1.7.2000 wherein the concept of transaction value has been incorporated and the earlier explanation has been deleted, the circular had lost its relevance. However, after so stating the said circular addressed to the representations received from the Chambers of Commerce, Associations, assessees as well as the field formations and in the context stated thus: -

> "5. The matter has been examined in the Board. It is observed that assessees charge and collect sales tax from their buyers at rates notified by the State Government for different commodities. For manufacture of excisable goods assessees procure raw materials, in some State, by paying sales tax/ purchase tax on them (in some States, like New Delhi), raw materials are purchased against forms ST-1/ST-35 without paying any tax). While depositing sales tax with the Sales Tax Deptt. (on a monthly or quarterly basis), the assessee deposits only the net amount of sales tax after deducting set off/rebate admissible, either in full or in part, on the sales tax/purchase tax paid on the raw materials during the said month/quarter. The sales tax set off in such cases, therefore, does not work like the central excise set off notifications where one to one relationship is to be established between the finished product and the raw materials and the assessee is allowed to charge only the net central excise duty from the buyer in the invoice. The difference between the set off operating in respect of central excise duty and that for sales tax can be best illustrated through an example. If the sales tax on a product 'A' of value Rs.100/- is, say 5% and the set off available in respect of the purchase tax/ sales tax paid on inputs going into the manufacture of the product is, say, Re.1/-, then the sales tax law permits the assessee to recover sales tax of Rs.5/-. But while paying to the sales tax deptt. be deposits an amount of Rs.5-1 = Rs.4 only. On the central excise duty payable would have been Rs.5-1 = Rs.4, in view of the set off notification, and the assessee would recover an amount of Rs.4 only from the buyer as Central Excise duty. Thus, it is seen that the set off scheme in respect of sales tax operate in these cases somewhat like the CENVAT Scheme which does not have the effect of changing the rate of duty payable on the finished product.
>
> 6. Therefore, since the set off scheme of sales tax does not change the rate of sales tax payable/ chargeable on the finished goods, the set off is not to be taken into account for calculating the amount of sales tax permissible as abatement for arriving at the assessable value u/s 4. In other words only that amount of sales tax will be permissible as deduction under Section 4 as is

equal to the amount legally permissible under the local sales tax laws to be charged/billed from the customer/ buyer."

[Emphasis added]

22. It is evincible from the language employed in the aforesaid circular that set off is to be taken into account for calculating the amount of sales tax permissible for arriving at the "transaction value" under Section 4 of the Act because the set off does not change the rate of sales tax payable/ chargeable, but a lower amount is in fact paid due to set off of the sales tax paid on the input. Thus, if sales tax was not paid on the input, full amount is payable and has to be excluded for arriving at the "transaction value". That is not the factual matrix in the present case. The assessee in the present case has paid only 25% and retained 75% of the amount which was collected as sales tax. 75% of the amount collected was retained and became the profit or the effective cost paid to the assessee by the purchaser. The amount payable as sales tax was only 25% of the normal sales tax. Purpose and objective in defining "transaction value" or value in relation to excisable goods is obvious. The price or cost paid to the manufacturer constitutes the assessable value on which excise duty is payable. It is also obvious that the excise duty payable has to be excluded while calculating transaction value for levy of excise duty. Sales tax or VAT or turnover tax is payable or paid to the State Government on the transaction, which is regarded as sale, i.e., for transfer of title in the manufactured goods. The amount paid or payable to the State Government towards sales tax, VAT, etc. is excluded because it is not an amount paid to the manufacturer towards the price, but an amount paid or payable to the State Government for the sale transaction, i.e., transfer of title from the manufacturer to a third party. Accordingly, the amount paid to the State Government is only excludible from the transaction value. What is not payable or to be paid as sales tax/VAT, should not be charged from the third party/customer, but if it charged and is not payable or paid, it is a part and should not be excluded from the transaction value. This is the position after the amendment, for as per the amended provision the words "transaction value" mean payment made on actual basis or actually paid by the assessee. The words that gain signification are "actually paid". The situation after 1.7.2000 does not cover a situation which was covered under the circular dated 12.3.1998. Be that as it may, the clear legislative intent, as it seems to us, is on "actually paid". The question of "actually payable" does not arise in this case.

23. In view of the aforesaid legal position, unless the sales tax is actually paid to the Sales Tax Department of the State Government, no benefit towards excise duty

can be given under the concept of "transaction value" under Section 4(4)(d), for it is not excludible. As is seen from the facts, 25% of the sales tax collected has been paid to the State exchequer by way of deposit. The rest of the amount has been retained by the assessee. That has to be treated as the price of the goods under the basic fundamental conception of "transaction value" as substituted with effect from 1.7.2000. Therefore, the assessee is bound to pay the excise duty on the said sum after the amended provision had brought on the statute book.

24. What is urged by the learned counsel for the assessee is that paragraphs 5 and 6 of the circular dated 9.10.2002 do protect them, as has been more clearly stated in paragraph 5. To elaborate, sales tax having been paid on the inputs/raw materials, that is excluded from the excise duty when price is computed. Eventually, the amount of tax paid is less than the amount of tax payable and hence, the concept of "actually paid" gets satisfied. Judged on this anvil the submission of the learned counsel for the assessee that it would get benefit of paragraph 6 of the circular, is unacceptable. The assessee can only get the benefit on the amount that has actually been paid. The circular does not take note of any kind of book adjustment and correctly so, because the dictionary clause has been amended. We may, at this stage, also clarify the position relating to circulars. Binding nature of a circular was examined by the Constitution Bench in CCE v. Dhiren Chemicals Industries[5], and it was held that if there are circulars issued by CBEC which placed different interpretation upon a phrase in the statute, the interpretation suggested in the circular would be binding on the Revenue, regardless of the interpretation placed by this Court. In CCE v. Ratan Melting & Wire Industries[6], the Constitution Bench clarifying paragraph 11 in Dhiren Chemicals Industries (supra) has stated thus: - "7. 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."

25. The legal position has been reiterated in the State of Tamil Nadu and Anr. v. India Cement Ltd.[7] Therefore, reliance placed on the circular dated 9.10.2002 by

the tribunal is legally impermissible for two reasons, namely, the circular does not so lay down, and had it so stated that would have been contrary to the legislative intention.

26. In view of the aforesaid analysis, we are of the considered opinion that the assessees in all the appeals are entitled to get the benefit of the circular dated 12.3.1998 which protects the industrial units availing incentive scheme as there is a conceptual book adjustment of the sales tax paid to the Department. But with effect from 1.7.2000 they shall only be entitled to the benefit of the amount "actually paid" to the Department, i.e., 25%. Needless to emphasise, the set off shall operate only in respect of the amount that has been paid on the raw material and inputs on which the sales tax/ purchase tax has been paid. That being the position the adjudication by the tribunal is not sustainable. Similarly the determination by the original adjudicating authority requiring the assessees to deposit or pay the whole amount and the consequential imposition of penalty also cannot be held to be defensible. Therefore, we allow the appeals in part, set aside the orders passed by the tribunal as well as by the original adjudicating authority and remit the matters to the respective tribunals to adjudicate as far as excise duty is concerned in accordance with the principles set out hereinabove. We further clarify that as far as imposition of penalty is concerned, it shall be dealt with in accordance with law governing the field. In any case, proceeding relating to the period prior to 1.7.2000 would stand closed and if any amount has been paid or deposited as per the direction of any authority in respect of the said period, shall be refunded. As far as the subsequent period is concerned, the tribunal shall adjudicate as per the principles stated hereinbefore.

27. Coming to the appeals preferred by the assessees, the challenge pertains to denial of benefit of the Central Sales Tax Act, the aforesaid reasoning will equally apply. The submission that the concession of excise duty is granted by the Excise Department of the Central Government is not acceptable. On a perusal of the circulars dated 12.3.1998 and 1.7.2002 we do not find that they remotely relate to any exemption under the Central Sales Tax imposed on the goods. What is argued by the learned counsel for the assessees is that the benefit should be extended to the Central Sales Tax as the tax on sales has a broader concept. The aforesaid submission is noted to be rejected and we, accordingly, repel the same. In view of the aforesaid, the appeals preferred by the assessees stand dismissed.

28. In the result, both sets of appeals stand disposed of accordingly. There shall be no order as to costs.

[1] (2007) 10 SCC 3
[2] 1980 (6) ELT 768 (Bom)
[3] 1984 (18) ELT 701 (Bom)
[4] 1987 (30) ELT 217 (Bom)
[5] (2002) 2 SCC 127
[6] (2008) 13 SCC 1
[7] (2011) 13 SCC 247