

CASE NO.:
Appeal (civil) 4022 of 1999

PETITIONER:
Commissioner of Central Excise

RESPONDENT:
Ratan Melting and Wire Industries, Calcutta

DATE OF JUDGMENT: 23/02/2005

BENCH:
Ruma Pal & Arijit Pasayat & C.K. Thakker

JUDGMENT:
JUDGMENT

ORDER

ARIJIT PASAYAT, J.

During hearing of this appeal it was fairly conceded by learned counsel for the parties that the decision of this Court in Collector of Central Excise, Patna v. Usha Martin Industries, [1997] 7 SCC 47) on which CEGAT placed reliance was over-ruled by a subsequent decision of a Constitution Bench in Collector of Central Excise, Vadodra v. Dhiren Chemical Industries, [2002] 2 SCC 127. But learned counsel for the respondent submitted that paragraph 11 of Dhiren Chemical's case (supra) operates in its favour. It reads as follows:

"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."

Subsequently, the effect of this observation 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."

A disparate view has been taken in CCE v. Maruti Foam Pvt. Ltd., [2004] 6 SCC 722 para 7 and Commissioner of Customs, Calcutta and Ors. v. Indian Oil Corpn. Ltd. and Anr., [2004] 3 SCC 488 para 34. It appears to us that the law declared by this Court is binding on the Revenue/Department and once the position in law is declared by this Court, the contrary view expressed in the circular should per force lose its validity and becomes non est.

Though the view expressed in Kalyani's case (supra), and our view about invalidation might clarify the observations in para 11 of Dhiren Chemical's case (supra), we feel that the earlier judgment in Dhiren Chemical's case (supra), being by a Bench of five Judges, it would be appropriate for a bench of similar strength to clarify the position. In the circumstances, we refer the matter to a larger bench of five Hon'ble Judges. Let the papers be placed before Hon'ble the Chief Justice of India for constituting an appropriate Bench.