

Binding Nature of Circulars – Apex Court unties the bound?

Snapshot

There is a common perception that Clarifications / Circulars issued by the Department are binding on them, more so when such Clarifications / Circulars provide an interpretation beneficial to the taxpayers.

The Hon'ble Supreme Court, however, recently overturned the decision of the Hon'ble High Court which placed reliance on a Circular of the Department.

Held that Clarifications/Circulars issued by the Department which are contrary to the statutory provisions and the correct interpretation decided by the Courts, have no existence in law and a revenue authority is eligible to challenge the validity of such Circular/ Clarifications.

The Hon'ble Supreme Court expounded that a taxpayer cannot escape liability on the strength of the Clarifications /Circulars issued by the Department which do not stand in conformity with the statutory provision as also declaration of law by the Courts.

Background and Facts of the case

Mohan Breweries and Distilleries Limited ('the taxpayer') was a company engaged in the business of manufacturing beer and liquor. The taxpayer purchased empty bottles from unregistered dealers for bottling of such beer and liquor.

The taxpayer was of the view that purchase of empty bottles from unregistered dealers would not be liable to purchase tax under Section 7-A of the Tamil Nadu General Sales Tax Act, 1951 ('the Act').

The taxpayer placed reliance on the Commercial Tax Revenue Clarification No. 105980/88 and 192/2000 dated 09 November 1989 and 27 December 2000 respectively (herein after referred to as "Department's clarifications" in short) issued to them by the Commissioner, which clarified that since the value of bottles is subjected to tax at the time of sale of the final product, there is no liability to pay purchase tax under Section 7-A of the Act.

The Assessing officer ('AO') denied the claim of the taxpayer placing reliance upon the judgment of the Hon'ble Supreme Court ('SC') in case of the **Premier Breweries [(1998) 108 STC 598]**. Aggrieved by the order of AO, the taxpayer preferred an appeal before the Tribunal, which was rejected. The taxpayer, therefore, preferred a writ petition before the Hon'ble High Court ('HC') of Madras.

Observations of HC

The Hon'ble HC rejected the contention of the taxpayer and held that the purchase of empty bottles would certainly attract purchase tax under Section 7-A of the Act.

The Hon'ble HC however, placed reliance on the decision of the Constitution Bench of SC in case of **Dhiren Chemical Industries [(2002) 126 STC 122]** and held that even though the purchase of empty bottles from unregistered dealers would be liable to purchase tax, the taxpayer was entitled for the benefit of the clarification issued by the Department. The Hon'ble HC thus, on one hand held that the tax was payable on purchase of empty bottles, but on the other hand held that the taxpayer ought not to pay tax in view of the Circular of the Department which was in favour of the taxpayer (even where the Hon'ble HC itself has held against such interpretation). Aggrieved by the order of the Hon'ble HC, the Revenue preferred a Special Leave Petition before the Hon'ble SC.

Questions before the Hon'ble SC

While, various substantial questions of law were raised before the Hon'ble SC, the present analysis focuses on the following important question of law addressed by the Hon'ble SC:

Whether the taxpayer is entitled to the benefit of a favorable Circular issued by the Department even when the Hon'ble HC or SC has given a contrary finding?

Taxpayer's contentions

The Department's clarification made it quite clear that the sale value of the empty bottles purchased is subjected to tax at the time of sale of the final product and therefore, liability to pay purchase tax does not arise and based on such Circular, the taxpayer did not pay tax.

The taxpayer relied upon various judicial precedents and contended that it is a settled law that clarifications issued by the Department by way of Circulars granting benefit to a taxpayer, are binding on the Revenue.

Revenue's contentions

The Revenue placed reliance on the decision of the Hon'ble SC in the case of **Ratan Melting & Wire Industries [(2008) 13 SCC 1]** where the Hon'ble SC had held that a Circular which is contrary to the statutory provisions has really no existence in law and that a Circular issued by the Department cannot prevail over an Order of the Hon'ble SC. The taxability of the disputed transaction thus, needs to be decided on the basis of the correct interpretation of the law and not on the basis of a Circular issued by the Department where it is contrary to the law.

Findings of the Hon'ble SC

The Hon'ble SC noted that the taxpayer had relied upon the Apex Court's judgment in case of **Dhiren Chemical Industries (Supra.)** wherein at para 9 of the judgment, it was held that regardless of the interpretation of the bench, if there are Circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation, that interpretation will be binding upon the Revenue.

In respect of such argument, the Hon'ble SC observed that this particular para of the judgment of **Dhiren Chemical Industries** was examined in the matter of **Kalyani Packaging Industries [(2004) 6 SCC 719]** wherein it was categorically held that the said observation has been misinterpreted. In the said judgment of **Kalyani Packaging Industries**, the Hon'ble SC had clarified that the said para was incorporated in the judgment of **Dhiren Chemical**

Industries to ensure that cases where benefits of exemption Notification had already been granted, the Revenue would remain bound and such cases were not reopened. However, this did not mean that even in cases where the Revenue 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 Department in preference to a decision of the Court. The said judgment of Kalyani Packaging Industries was ultimately upheld by the Constitution bench of the Hon'ble SC in case of Ratan Melting & Wire Industries (Supra).

The Hon'ble SC finally observed in the present case that there is no doubt on the principle that while the Clarifications/Circulars/Instructions issued by the Department are binding on the authorities under the respective statutes, so far as declaration of law in regard to any particular statutory provision is concerned, the view expressed in the binding decision of this Court or the High Court is to be given effect to. The Hon'ble SC, in conclusion overturned the judgment of the Hon'ble HC and held that no direction can be issued to enforce a clarification or Circular contrary to the declaration of law by the Courts.

KCM Note

Clarifications or Circulars are generally issued by the Department to explain the scheme of the Act and its objectives as well as to clarify the interpretations of the Department with respect to the provisions of the law. In the present case, the taxpayer sought a clarification from the department on the taxability which was answered in their favour. Since the laws do not contain express provisions with respect to the applicability and force of the Circulars issued by the Department, one has to refer to the judicial

precedents laid down by the Courts in this regard. It goes without saying that the Circulars issued by the Department being mere interpretations, are not binding on the Courts or even taxpayers and the taxpayers can challenge the validity of the said Circulars. However, the extent to which the Circulars are binding on the Department officers, has always been a matter of discussion in various judgments of the Apex Court itself.

There have been a catena of judgments by the Apex Court wherein time and again it has been held that the Circulars issued by the Department are binding on the Department and neither can the Department be permitted to take a stand contrary to the instructions issued by the Board nor it would be open for the Revenue to advance an argument or file an appeal contrary to the Circulars.

It is pertinent to note that the Hon'ble SC, way back in 1993, in the matter of **Bengal Iron Corporation [(1993) (4) TMI 277 SSC]** held that Circulars issued by the Central Government or State Government represent merely their understanding or opinion of the statutory provisions, either in favour or against the taxpayer. Nothing prevents the State from recovering the tax, if such tax was leviable according to law and there can be no estoppel against the statute. While acting in quasi-judicial capacity, the authorities are bound by law and not by any administrative instructions, opinions, clarifications or Circulars.

Later, the Constitution bench of the Hon'ble SC in 2008, in case of Ratan Melting and Wire Industries (Supra.) categorically held that it is obviously the Revenue authority who has to question a Circular which is beneficial to the Assessee. If the Revenue is not allowed to file an appeal on a ground contrary to a Circular it would ultimately result in there being no scope for filing an appeal and

consequently no question of a decision on the point since a taxpayer will not file an appeal questioning the view expressed in a Circular beneficial to him. The Hon'ble SC further observed that to lay content with the Circular would mean that the valuable right to challenge would be denied to the Revenue and there would be no scope for adjudication by the Hon'ble HC or the Hon'ble SC which would be against very concept of majesty of law declared by the Hon'ble SC which has a binding effect in terms of Article 141 of the Constitution of India.

Interestingly, the dispute under the Excise law, with respect to the definition of 'Place of removal' and availability of CENVAT Credit on Goods Transportation services in respect of outward transportation services seems apposite to be discussed here.

The Hon'ble SC in case of **Ultra Tech Cement Ltd. [2018 (2) TMI 117]** held that CENVAT Credit in respect of goods transportation services would not be available and the Circular No. 97/8/2007-ST dated 23 August 2007 (hereinafter referred to as '2007' Circular) issued by the Department does not depict the correct position of the law since the definition of input services had undergone a change in the year 2008.

After the judgment of the Hon'ble SC in case of Ultra Tech Cement (Supra.), the Department came out with a Circular No.1065/4/2018-CX dated 8 June 2018 (hereinafter referred to as '2018' Circular) wherein it was clarified that whether the CENVAT Credit in respect of outward transportation services would be available or not shall have to be decided considering the facts of each case.

The Hon'ble CESTAT, Ahmedabad in another case of Ultratech Cement Limited [2019 (2) TMI 1487], distinguished the aforesaid judgment of the

Hon'ble SC and relied upon the 2007 Circular as well as 2018 Circular and held in favour of the taxpayer. The Appeal by the Department against the order of the Hon'ble CESTAT was also rejected by the Hon'ble Gujarat HC [(2020 (3) TMI 1206] considering that the decision of the CESTAT was based on the Department Circular.

It would not be out of place to see the position under the Income-tax Act, 1961 in this regard. In the case of **Tata Iron & Steel Co Ltd v Upadhyaya 96 ITR 1 (Bom.)**, it was held that CBDT by way of issuance of circular cannot impose a burden on the taxpayer or otherwise put him in a worse position that he is under the statute but the CBDT can relax the rigor of the law or grant relief which is not be found in terms of the statute. The Apex Court in the case of **Navnitlal Javeri v. Sen (56 ITR 198)** and in the case of **Ellerman Lines Ltd (82 ITR 913)**, upheld the validity and binding nature of such beneficial circular and recognized the taxpayers' right to enforce them in his favour even in the Court. The said view is further upheld by the Apex Court in the case of **KP. Varghese v. ITO (131 ITR 597)**.

Interestingly, the Bombay High Court in the case of **Dattartraya Gopal Shette v. CIT (150 TIR 460)** observed that even if the contents of a circular may amount to a deviation on a point of law, a circular of the CBDT which confers some benefit on the assessee is binding on all officers and they must carry out their duties in the light of such circular.

Logically speaking, the sheer purpose of issuing a Circular beneficial to the taxpayer is to reduce unnecessary litigation by the Department. There are a host of Circulars that clearly direct the authorities to accept certain positions adopted by the taxpayer. Once it is said that a Circular is binding on the Department, all the authorities functioning within the executive should be

estopped from taking a stand contrary to the Circular given the fact that the very basis of issuance of Circular is to ensure uniformity in the interpretation of the law, at least from the side of the Department. If the Department itself challenges the validity of a Circular, it would lead to distortions and the very purpose of issuing a Circular i.e. to clarify the Department's interpretation, may be lost.

Conclusion

While interpretation of the Hon'ble SC that the Department can file an appeal against a Circular of the Department seems to have been settled by the Constitution bench, it remains to be seen how it will change the way Circulars are being given effect to by the authorities and the Courts since so far it

appeared to be a settled position that the Circulars issued by the Department are binding on them and Courts tend to rely upon beneficial Circulars issued by the Department.

The GST law being new, there has been a flood of Circulars by the Department, some of which have interpreted the law in a way beneficial to the taxpayer. Importantly, the GST law is governed by the States and the Centre simultaneously whereas the Circulars are generally issued by the Central Government and mostly replicated by the States by issuing parallel circulars. In such a situation, one may not be surprised if the Circulars issued by the Centre are challenged by the State Officers given that the Circulars of the same Department have also been challenged in the past.

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