(2008) 10 SC CK 0110

In the Supreme Court Of India

Case No : Civil Appeal No''s. 4022 of 1999, 3197 and 4789 of 2000, 1469 of 2002 and 3589-3592 of 2005

Commissioner of Central Excise, Bolpur — APPELLANT

Vs

Ratan Melting and Wire Industries — RESPONDENT

Date of Decision : 14-10-2008

Acts Referred:
Constitution of India, 1950 — Article 141

Citation : (2008) AIRSCW 1351 : (2009) 1 CLR 174 : (2008) 220 CTR 98 : (2008) 134 ECC 1 : (2008) 160 ECR 1 : (2008) 231 ELT 22 : (2008) 4 KLT 607 : (2009) 1 MLJ 192 : (2008) 13 SCALE 353 : (2008) 13 SCC 1 : (2008) 12 STR 416 : (2008) 2 Supreme 226

Hon'ble Judges : K. G. Balakrishnan, C.J;P. Sathasivam, J;J. M. Panchal, J;H. S. Bedi, J;Arijit Pasayat, J

Bench : Full Bench

Advocate : Mohan Parasaran, A.S.G., V. Shekar, Sudhir Malhotra, Poojan Malhotra, Sanjeev Malhotra, M.P. Devnath, V. Balachandran, V. Sridharan, Gajinder Jain, Alok Yadav, Pramod B. Agarwala, Rahul Kaushik, D.L. Chidananda, Gaurav Dhingra, B.V. Balram Das, for P. Parmeswaran, for the Appellant;

Final Decision : Partly Allowed

Judgement

Arijit Pasayat, J.—On a reference made by a Bench of three Judges in Commissioner of Central Excise, Bolpur Vs. Ratan Melting and Wire Industries, Calcutta, , these matters were placed before this Bench. The reference was necessitated because of certain observations by a Constitution Bench in Collector of Central Excise, Vadodra Vs. Dhiren Chemical Industries, . 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 Vs. Usha Martin Industries, etc., 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.

2. It was noted by the three-Judge Bench that the effect of the aforesaid observations was noted in several decisions. In Kalyani Packaging Industry Vs. Union of India (UOI), , it was noted as follows:

We have noticed that para 9 (para 11 in SCC) of Collector of Central Excise, Meerut Vs. Maruti Foam (P) Ltd., is being misunderstood. It, therefore, becomes necessary to clarify para 9 (para 11 in SCC) of Collector of Central Excise, Meerut Vs. Maruti Foam (P) Ltd., . 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 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.

3. 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. That is why reference was made.

4. Learned counsel for the Union of India submitted that the law declared by this Court is supreme law of the land under Article 141 of the Constitution of India, 1950 (in short the `Constitution'). The Circulars cannot be given primacy over

the decisions.

5. Learned counsel for the assessee on the other hand submitted that once the circular has been issued it is binding on the revenue authorities and even if it runs counter to the decision of this Court, the revenue authorities cannot say that they are not bound by it. The circulars issued by the Board are not binding on the assessee but are binding on revenue authorities. It was submitted that once the Board issues a circular, the revenue authorities cannot take advantage of a decision of the Supreme Court. The consequences of issuing a circular are that the authorities cannot act contrary to the circular. Once the circular is brought to the notice of the Court, the challenge by the revenue should be turned out and the revenue cannot lodge an appeal taking the ground which is contrary to the circular.

6. 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.

7. As noted in the order of reference the correct position vis-`-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-`-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.

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

9. The appeals filed by the revenue are allowed while those filed by the assessee stand dismissed.

