

(1999) 11 MAD CK 0053

In the Madras High Court

Case No : Writ Petition No. 10347 of 1999 and W.M.P. No. 14647 of 1999

Pioneer Miyagi Chemicals

APPELLANT

Vs

Central Board of Ex. and Cus.

RESPONDENT

Date of Decision : 04-11-1999

Acts Referred:

Central Excises and Salt Act, 1944 — Section 35C(4), 35G, 35L, 37B, 5(2)
Constitution of India, 1950 — Article 14, 19(1), 215, 226, 227

Citation : (2000) 68 ECC 448 : (2000) 116 ELT 441

Hon'ble Judges : E. Padmanabhan, J

Bench : Single Bench

Advocate : Arvind P. Datar, for the Appellant; V. Venkataswamy, ACGSC, for the Respondent

Final Decision : Allowed

Judgement

E. Padmanabhan, J.—The petitioner prays for the issue of writ of declaration to declare the impugned Circular No. 47/1/97-CX, dated 3-

3-1997 issued by the first respondent as ultra vires of Section 37B of the Central Excise Act, 1944, Articles 14,19(1)(g) and 265 of the

Constitution of India insofar as the petitioner is concerned.

2. This Court ordered notice of motion on 18-6-1999. The service on the respondents was completed. On behalf of the respondents the 3rd

respondent had filed the counter affidavit.

3. Heard Mr. Arvind P. Datar, learned Counsel appearing for the writ petitioner and Mr. V. Venkataswamy, learned Additional Central

Government Standing Counsel, appearing for the respondents.

4. The petitioner is a manufacturer of Di-Calcium Phosphate - Animal Feed Grade (DCP) out of animal bones which are subject to various

processes. The petitioner classified the said product under sub-heading 2302.00 of the Central Excise Tariff attracting nil rate of duty, while the respondent classified the same under sub-heading 2835.00 attracting 16% duty. Such classification according to the petitioner runs counter to several decisions of the Tribunal. Sub-heading 2302.00 falls under Chapter 23, refers to prepared animal fodder and the sub-heading is applicable to preparations of a kind used in animal feed including dog and cat food. The sub-heading 2835.00 comes under Chapter 28 which deals with inorganic chemicals.

5. The controversy as to the classification of DCP has been considered by the Tribunal. In several decisions it has been held that DCP-Animal Feed Grade falls under the classification sub-heading 2302.00, as preparation of a kind used in animal feeding. Such a view had been taken in 1994 (70) ELT 234 wherein it has been held that the expression animal feed would include DCP and it is entitled for exemption in terms of the exemption Notification No. 55/75-C.E., dated 1-3-1975. Such a view has also been taken in 1998 (102) ELT 424 and it has been held that DCP is classifiable only under the sub-heading 2302.00.

6. According to the writ petitioner the very classification was the subject matter of consideration before the Apex Court in Collector of Central Excise, Coimbatore Vs. Protein Products of India Ltd., wherein Their Lordships of the Apex Court laid down that ossein and gelatin obtained by chemical treatment of bone were eligible for exemption as bone products under Notification No. 55/75. According to the petitioner when once exemption has been granted with respect to the specific raw materials, there is no justification for importing any limitation as to the nature of the products that are entitled for exemption.

7. The petitioner also relies upon the decision of the Apex Court in M/s. Sun Export Corporation, Bombay Vs. Collector of Customs, Bombay and another, where Their Lordships of the Supreme Court held that animal feed supplement such as pre-mix of vitamin AD-3 which are generally added to the animal feed covered by the generic term and hence eligible for exemption under Notification No. 234/82-C.E., dated 1-11-1982.

8. Despite such pronouncements the first respondent issued the impugned Circular on 3-3-1997 directing that DCP of animal feed grade will be

classifiable only under sub-heading 2835.00 contrary to the said pronouncements. According to the petitioner the above pronouncement is sought to be nullified by the impugned Board's circular, that the said pronouncement have become final and they have not been taken up in appeal before

the Apex Court nor there is any decision by any High Court to the contrary. It is contended that by the Circular the Board has no authority to

overrule a judicial pronouncement or decision of a Tribunal or Courts and such an action is without jurisdiction.

9. While admitting that the Legislature could set right the defects that may be pointed out by the Supreme Court or High Court, but neither the first

respondent, nor any other respondent had the authority to nullify the judicial pronouncements.

10. The first respondent which is empowered to issue circulars u/s 37B cannot nullify the effect of the Judicial decision of the Tribunal as well as

High Court and the Supreme Court. It is the further contention of the petitioner that Section 35C(4) provides mandatorily that the decision of the

Appellate Tribunal shall be final save as provided u/s 35G or Section 35L. The petitioner also relies upon the decision of the Gujarat High Court in

Indichem Vs. Union of India, wherein the Gujarat High Court held that the Circular issued by the Central Board of Excise & Customs u/s 37B

which runs counter to the judicial pronouncement or decisions rendered by High Court or decisions rendered by the Tribunal are not valid and are

liable to be quashed.

11. It is contended that the respondent had exceeded the jurisdiction in issuing the impugned circular in purported exercise of power conferred u/s

37B of the Act. It is further contended that the first respondent has no power to issue a clarification with respect to the classification of the DCP

Animal Feed Grade and that too contrary to the judicial pronouncements of the Tribunal, High Court and Apex Court. If the decisions are not

acceptable, then the only remedy open to the respondent is to move the Appellate Forum or the Supreme Court as the case may be.

12. The impugned circular was the subject matter of challenge before the Gujarat High Court and the Division Bench of the said High Court

declared the same as ultra vires of Section 37B by its order dated 17-3-1999 in Special Civil Application No. 3411 of 1997. Despite such

pronouncement, the second respondent had initiated proceedings and issued a show cause notice as detailed in the affidavit. According to the petitioner, the respondents are of the view that the decision of the Gujarat High Court will have no application to them. Such a stand taken by the respondents, it is contended, runs counter to the settled legal position as once a notification of the Central Government or any such authority is declared illegal or void by a High Court, such a decision would be binding throughout the country unless there are contrary decision of any High Court.

13. It is further contended that the decision of the Gujarat High Court will bind the respondents and as the respondents are not giving effect to the said decision, the present writ petition is being filed. It is also contended by the petitioner that the Central Board has no power to issue a circular contrary to the decision of the Tribunal in *Indichem v. Union of India*, cited supra.

14. It is further contended by a circular, the first respondent Board cannot be allowed to deviate or indirectly set at naught the binding decision rendered by the Tribunal or by a High Court. Though the decision of the Tribunal reported in 1998 (102) ELT 424 holding that DCP Animal Feed Grade is classifiable under Chapter sub-heading 2302.00 of CETA, has been affirmed by the Supreme Court by its order dated 5-11-1998, the respondents had chosen to brush aside the same and issued the show cause notice. The action of the respondent is illegal and per se without jurisdiction and authority and it is nothing but an arbitrary exercise of power. Hence the present Writ Petition.

15. In the counter filed on behalf of the respondents it has been stated that the first respondent received representation as there is no uniformity in classification of DCP of Animal Feed Grade for the purpose of levy of Central Excise duty. The first respondent after ascertaining the product, in exercise of powers conferred u/s 37B of the Central Excises and Salt Act, 1944 issued order on classification of DCP on 3-3-1997 which is being challenged in the present writ petition. The product DCP is manufactured from animal bone and consumed by animal and poultry industries as Calcium and Phosphorous supplement. It is used for compounding mineral mixtures for feeding livestock and DCP cannot be used directly as animal feed. DCP Animal Feed Grade would rest upon the fluorine content of the

material and being not more than 0.1% and the said per centage is kept low in order to prevent it from being toxic to livestock.

16. Chapter 2302 includes product of a kind used in animal feed not elsewhere specified or included, obtained by processing vegetable or animal

materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues

and by products of such processing. The DCP is a chemical compound i.e. Calcium Hydrogen Orthophosphate which falls under sub-heading

2835 of the tariff as Phosphate. As the DCP is specified under sub-heading 2835.00 of the tariff, it will not come under Chapter 2302 of the

Tariff. Hence the Board has issued the impugned order for the purpose of uniformity in the classification of the product Di-Calcium Phosphate for

purpose of uniformity in the classification of the Product DCP.

17. It is contended by the respondents that u/s 37B of the Act, the first respondent Board had the power and authority to issue orders for the

purpose of uniformity in the classification of excisable goods and the notification is not ultra vires of Section 37B of the Act as contended. The

petitioner classified the DCP under Chapter sub-heading 2835.00 upto 7-8-1996 so as to avail full exemption under Notification Nos. 442/86,

dated 6-11-1986 and 7/94, dated 1-3-1994 and reclassified the said DCP under Chapter sub-heading 2302.00 after 7-8-1986. The said

exemption notification was rescinded on 23-3-1997.

18. The contention of the petitioner, that they have rightly classified DCP under sub-heading 2302.00 of Central Excise Tax (sic), 1985 attracting

nil rate of duty is not correct. The petitioner had classified the goods first at chapter sub-heading 2835.00 and later under sub-heading 2302.00

and it shows the assessee's intention to classify the goods and its attempt to bring the same under a heading where exemption is available. The

attempt is to get the exemption and not for classification of the goods correctly. Further an appeal is pending against the order passed by the

Assistant Commissioner of Pondicherry classifying the DCP under Chapter 2302.00 and hence the writ petition is premature.

19. The respondents further point out that the Tribunal considered the classification of DCP Animal Feed Grade as one falling under Chapter

2302.00 or Chapter 31. But the Tribunal had not considered as to whether DCP is

not specified or included elsewhere in the Tariff. As per the Board the DCP was specified under Chapter 2835.00 of Central Excise Tariff and so it will not be classified under Chapter 2302 of Tariff.

20. It is pointed out that the Tribunal had not scrutinised the reasons to classify the DCP under Chapter sub-heading 2835.00 of the Tariff and it is

incorrect to contend that the Tribunal had accepted the circular as prayed for by the writ petitioner. It is pointed out that the decision reported in

1998 (38) E.L.T. 749 (SC) is not relevant to the issues involved in the present writ petition. So also the other pronouncements referred to by the writ petitioner.

21. It is incorrect to contend that the decision of the Tribunal classifying the DCP under Chapter sub-heading 2835.00 had been nullified by the

impugned circular issued by the first respondent. Even before the issuance of the circular by the first respondent, the DCP was classified either

under Chapter 28 or 31 as seen from the exemption Notifications 446/86 and 7/94. It is incorrect to contend that the circular had been issued to

get over the decision of the Tribunal and other courts.

22. The respondent also contends that in the decision of the Gujarat High Court in the Indichem Vs. Union of India, , it has been held that the

circular issued u/s 37B of the Act runs contrary to the decision rendered by the Tribunal. But the said pronouncement will have no application, nor

it is valid as the petitioner's case did not fall within the above ambit as seen from the discussions of the Gujarat High Court.

23. It is contended that Section 37B of the Act empowers the Board not only to give instructions for attaining uniformity in classification but also to

issue order or direction for the purpose of uniformity in classification of the excisable goods. It is incorrect to contend that the first respondent

Board has no power to issue a classification regarding classification of DCP Animal Feed Grade. Whether DCP is animal feed or not would

depend upon the fluorine content in the DCP. Hence, the averments contrary to the above are denied as false and unsustainable.

24. It is contended that the Gujarat High Court had not considered the reasons stated in the impugned order and had also not taken into

consideration the classification which is sought to be issued by the first respondent. The clarification is to arrive at a uniformity in the classification of

excisable goods and there is no illegality. The Writ Petition is not maintainable as the issue involved is different from that of the decision taken by the Tribunal.

25. Further, the petitioner had also preferred an appeal against the order of the third respondent and the Board's circular or order is not binding on the Appellate Authority. As there was no uniformity in the classification, the Board has issued the impugned order on the classification of DCP.

Even here also, the DCP is an animal feed or not depends upon the fluorine content in it. The petitioner has no prima facie case. There are absolutely no merits and the respondent prays for the dismissal of the writ petition.

26. The material portion of the impugned circular reads thus: -

Di-Calcium Phosphate (DCP of Animal Feed Grade...Classification of ...sub-heading 2835.00

9. Now, therefore, in exercise of the powers conferred u/s 37B of the Central Excise Act, 1944 (henceforth referred to as the Act), and for the

purpose of ensuring uniformity in the classification of the goods in question, the Board hereby orders that DCP of animal feed grade (IS: 5470-

1969) shall be classifiable under sub-heading No. 2835.00 of the Tariff. The Board further directs that a copy of this order be sent to all the Chief

Commissioners and Commissioners of Central Excise for being observed and for being made available as required to all other persons employed

in the execution of the Act and for issue of Trade Notices.

27. The said clarification had been issued in exercise of powers conferred u/s 37B of the Central Excise Act, 1944. Section 37B which is heavily

relied upon by the respondents to issue the impugned circular reads thus :-

37B. Instructions to Central Excise Officers: -The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act,

1963 (54 of 1963) may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or

with respect to levy of duties of excise on such goods issue such orders, instructions and directions to the Central Excise Officers as it may deem

fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of

the said Board:

Provided that no such orders, instructions or directions shall be issued -

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose off a particular case in a particular manner; or

(b) so as to interfere with the discretion of the [Commissioner of Central Excise (Appeals)] in the exercise of his appellate functions.

The above provision enables the Central Board of Excise and Customs to issue instructions or directions to the Central Excise Officers for the

purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods. However proviso to Section

37B forbids that such instructions or directions shall not require any Central Excise Officer to make a particular assessment or to dispose of a

particular case in a particular manner or to interfere with the discretion of the Commissioner of Central Excise (Appeal) in the exercise of appellate

functions.

28. In other words, the administrative orders or instructions or directions issued u/s 37B is required to be observed by the Excise Authorities.

However, when authorities are required to act as quasi judicial authorities or functionaries, they are to decide the matter independently and they are

statutorily protected from such type of directions or instructions. The object behind Section 37B being to achieve uniformity in the classification of

excisable goods or levy of duty of excise on such goods.

29. In exercise of Section 37B, the first respondent has no power either to levy a tax or to include a particular excisable goods or addition of

goods as excisable or bring the same under goods as if they are excisable. Nor the first respondent got the authority to classify or reclassify

particular excisable goods, nor it has the power to issue clarification as to the entry or as to one or more entries under which the particular

excisable goods falls.

30. The first of the contention which has to be taken up for consideration being whether the excisable goods DCP-Animal food grade was the

subject matter of consideration before a judicial forum? If so, what is the ultimate orders or adjudication passed by a judicial forum. In 1989 (19)

ECC 17 the CEGAT, Special Bench "C, New Delhi held thus:-

He pleaded that the Di-Calcium Phosphate manufactured by appellants was only of animal feed grade and there are separate IS specifications for

this produce vide IS-5470-1969. He stated that as held by the Honourable Gujarat High Court, the products manufactured by them, on the same

logic qualified to be considered as animal feed. He pleaded that a point had been made in the grounds of appeal that the quantum of Di-Calcium

Phosphate added to the total feed was very small and therefore, this could not be considered as animal feed. He pleaded that just because of small

or micro quantities of the materials added, these would not get disqualified for being considered as animal feed. In this context, he referred to the

judgment of the Tribunal in the case of 1985 ECR 2109 where the question for consideration was whether zinc sulphate used in micro quantities

could be considered as a fertilizer. He pleaded that the Tribunal in that case held that agriculture grade zinc sulphate which was used in small

quantities for the soil qualified as a fertilizer. His plea is that it is not the quantum which determines whether the goods are to be considered as a

feed or not but the nature of its use in the animal feed which should be determining factor. He also pleaded as to what should be considered as

feed or fodder was examined by the Honourable High Court of Punjab & Haryana in the case of oil cake and they have in the case of The Punjab

Copra Crushing Oil Mills v. The State of Punjab and Ors. (1971 RLR 490) held as under:-

The second point argued by the learned counsel for the petitioner is that the Assessing Authority wrongly disallowed the petitioner's claim for

exemption u/s 5(2)(a)(i) of the Act in respect of oil-cakes by holding that oil-cakes were not fodder. The petitioner filed affidavits of Shri Gurdas

Ram Bedi, President, M.F.G. Jullundhur City, Shri Roshan Lal, General Secretary, M.F.G. Jullunder City, Shri Waryam Singh, owner of dairy

farm and member of Market Committee, Jullundur, and Shri Ajudhia Prashad, Attari Bazar in support of its contention that the oil-cakes were

nothing but fodder and that in common parlance Khal (oil-cakes) is known to be fodder and is used as food for milch as well as non-milch animals.

The Assessing Authority said:-

Oil-Cakes are used as stimulant for fodder and in that case this stimulant does not lose its identity. Khal as such keeps its identity and by virtue of

this it is a separate commodity which itself is marketable not as fodder, but as stimulant to fodder for getting better yield of milk.

Frankly speaking, I have not been able to understand the logic employed by the Assessing Authority. It has not been mentioned by him that oil-cakes are used for any other purpose. He has drawn a distinction between a fodder and a stimulant for fodder. I have not been able to understand on what authority did he say that oil-cakes are not fodder but stimulant for fodder. Oil cakes are used as a part of fodder and are given to the milch animals along with the fodder in order to get a better yield of milk from them. They are, therefore, used as fodder and nothing else. The finding of a fact, therefore, arrived at by the Assessing Authority is clearly erroneous in law. The affidavits filed by the petitioner firm clearly stated that Khal (oil-cakes) was known to be fodder and was used as fodder for milch as well as non-milch animals. This assertion has not been denied by the Assessing Authority nor has he said that there is any other use of the oil-cakes. At the hearing, the learned counsel for the respondents stated that oil-cakes are also used as manure for mulberry trees which means that another use of oil-cakes is a fertilizer and even fertilizers are exempt from the payment of sales-tax.

He pleaded not doubt in 1984 by amending Notification, a specific exemption is given with respect to animal feed supplement, but this did not mean that such supplements could not be considered as animal feed before this amendment. He pleaded that this amendment to the notification to cover animal feed supplements could be taken only as clarificatory in nature. He pleaded that notwithstanding the fact that Di-calcium Phosphate was added in small quantity in the total feed of the animal, this by itself was also animal feed. His plea is that animal feed comprises of a number of items and each constitute should be considered as animal feed. He pleaded the Encyclopedia as also Macropadia-Farrning and Agricultural Technology showed that additives like chemicals and phosphates were animal feed.

In fact the CEGAT had followed the decision of the Gujarat High Court. Hence, it is clear that there has been a judicial adjudication with respect to the classification not only by CEGAT, but also by the High Court of Gujarat.

31. Nextly it is to be considered as to whether the first respondent has the authority or jurisdiction to issue a circular when the point in issue is covered by a judicial precedent ? And whether the first respondent has the

authority to issue a circular by way of clarification and set at naught the judicial pronouncements.

32. In *Indichem v. Union of India* reported in 1996 (88) E.L.T. the very same question was considered by a Division Bench of the Gujarat High

Court. B.C. PATEL, J., speaking for the Bench while considering the scope of Section 37B of the Act held thus:-

This Section empowers the Board to issue circulars for the purpose of uniformity in the classification of excisable goods or with respect to levy of

duties of excise on such goods. Certainly, this section does not authorise the Board to issue directions which is contrary to the decision rendered

by the Tribunal. Mr. Ajmera, learned Advocate could not point out anything which would suggest that the Board has such powers or that the Board

was justified in issuing such circulars. It may be that the Board may not be in agreement with the view taken by the Tribunal. Then in that case, the

Board may carry the matter in appeal, but once the decision has become final by issuing circular, the decision rendered by the Tribunal cannot be

made to be nugatory.

33. Before the very same Gujarat High Court, the very same circular was impugned in Special Civil Application No. 3411 of 1997 in respect of

the very same DCP. The Division Bench answered the issue against the Revenue and in favour of the writ petitioner. It has been held thus:

Thus, Section 37B, does not empower or authorise the Board to issue directions which are contrary to the decision rendered by the Tribunal. It

may be that the Board may not be in agreement with the views expressed by the Tribunal. Then in that case, the Board may carry the matter in

appeal. But once the decision has become final by issuing circular the decision rendered by the Tribunal cannot be made to be nugatory. The

Board cannot use its authority or powers in issuing Circulars in a manner which may have ultimate effect of nullifying the decision of CEGAT as it

taking the order in Appeal and reversing the order exercising the powers as if it is sitting as Apex Court. In the instant case, the Apex Court has

confirmed the views expressed by the Tribunal.

Mr. Patel, learned Advocate appearing for the respondent submitted that before the Tribunal, the contention was raised but the Tribunal stated that

for the first time, it cannot be raised and more particularly when that aspect

would require examination of fact. He submitted that the circular is issued for the reasons indicated in the preamble of the circular itself. We are not able to agree with the contention raised by Mr. Patel for the simple reason that the Tribunal not in one but more than the decision has given positive finding that entry under sub-heading 2802.00 under Heading 23.02 related to preparations of a kind used in animal feeding including dog and cat food. Preparation of food of a kind used in animal feeding including dog and cat food would be covered by sub-heading 2303.00 and under Heading 23.02. There is a positive finding then there is no need to have a negative finding when the product is not covered by heading or under any other sub-heading.

I am in respectful agreement with the view taken by the Division Bench of the Gujarat High Court on merits as well as to the authority of the first respondent to issue the circular and the said circular had already been quashed by the Division Bench of the Gujarat High Court. While respectfully agreeing with the view taken by the Division Bench, the circular impugned also deserves to be quashed.

34. Incidentally, it is being contended that the decision of the Gujarat High Court or any other High Court will not bind the respondents 2 and 3

herein and therefore the petitioner had approached this Court. If such a contention had been raised by the second respondent or by the third

respondent, it would be an unfortunate situation. In this respect the learned Counsel for the writ petitioner rightly relied upon the Division Bench,

Judgment of the Bombay High Court in Commissioner of Income Tax Vidharbha v. Codavaridevi Saraf reported in 1978 Vol. 113 page 589. It

has been held thus:-

Question then arises what is going to be the effect of a decision of the Madras High Court holding that Section 140A(3) is unconstitutional as

violative of Article 19(1)(f) of the Constitution. A similar question came up for consideration before the Supreme Court in the case of East India

Commercial Co. Ltd. v. Collector of Customs, Calcutta, AIR 1962 SC 1983, wherein it was held that an administrative Tribunal cannot ignore the

law declared by the highest court in the State. Taking into consideration the provisions of Articles 215, 226 and 227 of the Constitution of India, it

would be anomalous to suggest that a Tribunal over which the High Court has

superintendence can ignore the law declared by that Court and start proceeding in direction violation of it. If a Tribunal can do so, all the subordinate courts can equally do so, for there is no specific provision, just like in the case of the Supreme Court making the law declared by the High Court binding on subordinate courts. It is implicit in the power of supervision conferred on a superior Tribunal that all the Tribunals subject to its supervision should conform to the law laid down by it. Such obedience would also be conducive to their smooth working; otherwise, there would be confusion in the administration of law and respect for law would irretrievably suffer.

In view of this clear pronouncement of the Supreme Court, it is not controverted by Mr. Joshi on behalf of the revenue that an Income Tax

Tribunal sitting at Madras is bound to proceed on the footing that Section 140A(3) of the Act is non-existent in view of the pronouncement of the

Madras High Court in the case of A.M. Sali Maricar and Another Vs. Income Tax Officer and Another, . Actually, the question of authoritative or

persuasive decision does not arise in the present case because a Tribunal constituted under the Act has no jurisdiction to go into the question of

constitutionality of the provisions of that statute. It should not be overlooked that the Income Tax Act is an All-India statute and if an Income Tax

Tribunal in Madras, in view of the decision of the Madras High Court, has to proceed on the footing that Section 140A(3) was non-existent, the

order of penalty thereunder cannot be imposed by the authority under the Act. Until a contrary decision is given by any other competent High

Court, which is binding on a Tribunal in the State of Bombay, it has to proceed on the footing that the law declared by the High Court, though of

another State, is the final law of the land.

The Division Bench of the Bombay High Court had in turn followed the decision of the Apex Court in K.S. Venkataraman and Co. Vs. State of

Madras, . Hence even if the decision is by the CEGAT as the Bench or as that of the Gujarat High Court the respondents 2 and 3 are bound by

the said pronouncement. As already held that impugned circular issued by the first respondent deserves to be quashed as one issued in excess of

jurisdiction.

35. The scope of Section 37B of the Central Excise Act, 1944 enables the Board

to issue directions with respect to classification of excisable goods and with respect to levy of excise duty on such goods. It is equally well settled that the Board has got the powers to issue purely administrative directions or such other directions so long as it does not interfere with the quasi judicial powers of such authorities. The Board has no power to interfere with the quasi judicial powers of the assessing officers under the Act or for that matter the appellate authority under the Act and this is obviously clear from the statutory provisions. The circular that may be issued by the first respondent Board cannot override the Act, nor it could run counter to the statutory provisions, nor it binds the quasi judicial authorities.

36. Hence, in the light of the pronouncements this Court holds that the first respondent has neither the authority, nor jurisdiction to issue the circular which runs counter to the judicial pronouncements and consequently, the impugned circular is quashed.

37. The writ petition is allowed, but without costs. Consequently W.M.P. No. 14647 of 1999 is closed.