

O R D E R

Delay condoned.

We have heard Mr. V. Lakshmikumaran, learned counsel for the Petitioners at length. Reliance is placed on Circulars of 1973 and 1987. These Circulars were not relied upon before the lower authorities. They are being relied upon for the first time in this Court. Parties cannot be permitted to rely upon the material which have not been relied upon before the lower authorities/Court. In this case before the lower authorities, reliance was placed only upon the Circular of 1995. That Circular, being of 1995, can be of no assistance to the Petitioners as the concerned period is August 1990 to January 1991.

This Court has, in the case of Collector of Central Excise, Vadodara vs. Dhiren Chemical Industries reported in 2002 (139) ELT 3 (SC), clarified that when an exemption Notification uses the words "has already been paid", the benefit of that Notification would only be available if duty has, as a matter of fact, been paid and has been paid at the appropriate or correct rate. It is held that where the raw material is not liable to excise duty or to "nil" rate of duty then, as a matter of fact, no duty is paid and to such good effect benefit of an exemption Notification will not be available.

It was however sought to be submitted that in para 9 of Dhiren Chemical's case (supra) it has been clarified that in spite of the interpretation given by this Court, if there are any circulars issued by the Central Board of Excise and Customs which place a different interpretation, that interpretation would be binding upon the Revenue. It is submitted that Dhiren Chemical's case thus lays down that an interpretation given in Circulars would prevail over the interpretation given by a Constitution Bench of this Court. In support of this submission reliance is placed on a decision dated 22nd January, 2004 in Civil Appeal No. 9924 of 1996 entitled Collector of Central Excise, Meerut vs. Maruti Foam (P) Ltd. wherein relying upon para 9 of Dhiren Chemical's case it is held that the Circular would be binding on the Revenue.

We have noticed that para 9 of Dhiren Chemical's case is being misunderstood. It therefore becomes necessary to clarify para 9 of Dhiren Chemical's case. One of us (Variava, J.) was a party to the Judgment of the Dhiren Chemical's case and knows what was the intention in incorporating para 9. 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's case because of 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's case, the Revenue was likely to reopen cases. Thus para 9 was incorporated to ensure that 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 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. Whereas as a result of dispute the matter is sub-judice a Court/Tribunal is, after Dhiren Chemical's 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's case.

In this case, as set out above, even the benefit of a Circular is not available. Therefore the interpretation given in Dhiren Chemical's case would apply. Thus we see no infirmity in the impugned Judgment. The Special Leave Petition stands dismissed.

.....J.

(S.N.Variava)

.....J.

(H.K.Sema)

New Delhi,
May 06, 2004.