

Appeal No. E/1901/2012, E/56954,56966,58293,58295/2013

Customs, Excise & Service Tax Appellate Tribunal
SCO 147-148, SECTOR-17-C, CHANDIGARH-160017

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Appeal No. E/01901/2011, E/56954,56966,58293,58295/2013  
E/50488,50494,52488/2015, E/00084,60007/2016

| Sr. No | Case No             | Impugned Order Detail's        | Date of Impugned Order | Passed By                                                | Appellant                | Respondent              |
|--------|---------------------|--------------------------------|------------------------|----------------------------------------------------------|--------------------------|-------------------------|
| 1      | E/1901/2012-DB      | OIO-03/COMMR/PKL/2012          | 09/04/2012             | Commissioner of Central Excise-PANCHKULA                 | Jyoti Sales Corporation  | C.C.E. & S.T.-Panchkula |
| 2      | E/56954/2013-DB     | OIO-45-COMMR-PKL-2012          | 26/12/2012             | Commissioner of Central Excise and Service Tax-PANCHKULA | Punjab Fabricators       | C.C.E. & S.T.-Panchkula |
| 3      | E/56966/2013-DB     | OIO-10/COMMR/PKL/2012          | 01/03/2012             | Commissioner of Central Excise-PANCHKULA                 | Punjab Fabricators       | C.C.E. & S.T.-Panchkula |
| 4      | E/58293/2013-DB     | OIO-17-COMMR-PLK-2013          | 09/05/2013             | Commissioner of Central Excise-PANCHKULA                 | Jyoti Sales Corporation  | C.C.E. & S.T.-Panchkula |
| 5      | E/58295/2013-DB     | OIO-14/COMMR/PLK/2013          | 30/03/2013             | Commissioner of Central Excise-PANCHKULA                 | Shri Vinayakrice Techno  | C.C.E. & S.T.-Panchkula |
| 6;     | E / 50488 / 2015-DB | OIO-17-CE-COMMR-DM-RTK-2014-15 | 15/12/2014             | Commissioner of Central Excise-ROHTAK                    | Hsf Food Protech Pvt Ltd | C.C.E. & S.T.-Rohtak    |
| 7;     | E / 50494 / 2015-DB | OIO-17-CE-COMMR-DM-RTK-2014-15 | 15/12/2014             | Commissioner of Central Excise and Service Tax-ROHTAK    | Suneel Gupta             | C.C.E. & S.T.-Rohtak    |
| 8;     | E / 52488 / 2015-DB | OIA-71-CE-DLH-2015             | 26/05/2015             | Commissioner of Central Excise-PANCHKULA                 | Jyoti Sales Corporation  | C.C.E. & S.T.-Panchkula |
| 9      | E/84/2016-DB        | OIO-16/CE/COMMR/HG/RTK/2015-16 | 17/11/2015             | Commissioner of Central Excise and Service Tax-ROHTAK    | Hsf Food Protech Pvt Ltd | C.C.E. & S.T.-Rohtak    |
| 10     | E/60007/2016-DB     | OIA-11-CE-DLH-2016             | 03/02/2016             | Commissioner of Central Excise-PANCHKULA                 | Punjab Fabricators       | C.C.E. & S.T.-Panchkula |

**Represented by:**

For Appellant (s) : Shr Vikrant Kackaria, Advocate

For Respondent (s): Shri Atul Handa, AR

**CORAM :**

**Mr. Ashok Jindal, Hon'ble Member (Judicial)**

**Mr. Bijay Kumar,, Hon'ble Member (Technical)**

Date of Hearing/Decision: 19.02.2019

**ORDER No.A/60300-60309 / 2019**

**Per : Mr. Ashok Jindal**

The appellants are in appeals against the impugned orders wherein the demand of duty has been confirmed by classifying their machinery as Par-boiling machines under heading No. 84.19 of CETA, 1985.

2. The brief facts of the case are that the appellants are manufacturing Par-boiling machines and classifying the same under Chapter Heading No.

8437 of CETA, 1985. Revenue entertained a view that the said machines are classifiable under Chapter Heading No. 8419 of CETA. Therefore, the proceedings were initiated against the appellants and it was held that the merit classification of the Par-boiling machines is under Chapter Heading No. 8419 of CETA. This Tribunal held that merit classification of the said machine is under Chapter Heading No. 8419 of CETA. The said order was challenged by the appellants before the Hon'ble Apex Court and the Hon'ble Apex Court directed this Tribunal to constitute a Larger Bench to resolve the issue of classification. The Larger bench is also held that the merit classification of these machines is under Chapter Heading No. 8419 of CETA. As, the reference has been answered against the appellants, the appeals are listed before us for final disposal. The period of dispute in all appeals ranges from 01.01.2011 to 15.04.2014.

3. Today, when the appeals were called for final disposal, the Ld. Counsel for the appellants submits that during the impugned period, the CBEC Circular No. 924/14/2010-CX. Dated 19.05.2010 was in existence and as per the said circular, the rice Par-boiling machinery was having merit classification under Chapter Heading No. 8437 of CETA. The said circular has been rescinded by Circular No. 982/06/2014-CX dated 15.05.2014, therefore, clearances before 15.05.2014 as per the CBEC Circular dated 19.05.2010, the appellants have correctly classified the same under Chapter heading No. 8437 of CETA. Therefore, no duty can be demanded as held by the Hon'ble Apex Court in the case of ***Paper Products Ltd. Vs.***

***Commissioner of Central Excise 1999 (112) ELT 765 (S.C.)*** that the departmental circular are binding in nature on the revenue authorities and as the circular was in force at the relevant point of time, therefore, demand against the appellants is not sustainable. He also relied on the decision of the Hon'ble Apex Court in the case of ***Collector of Central Excise, Vadodara vs. Dhiren Chemical Industries 2002 (199) ELT 3 (S.C.)***. Further, he relied on the decision of the Hon'ble Apex Court in the case of ***Kalyani Packaging Industry vs. UOI 2004 (168) ELT 145 (S.C.)*** and also relied on the decision of the Hon'ble High Court of Allahabad in the case of ***Hindustan Coca-Cola Beverages Pvt. Ltd. Vs. UOI – 2013 (296) ELT 150 (ALL.)*** to say that circulars are issued in exercise of statutory power by the Departments, and are binding on authorities and officials of Department. He also relied on the decision of the Hon'ble High Court of Allahabad in the case of ***UFLEX Ltd. Vs. Commissioner of Central Excise, Customs & Service Tax, Noida 2016 (335) ELT 376***. He relied on the decision of the Hon'ble Gujarat High Court in the case of ***Commissioner of Central Excise & Customs, Surat-I vs. Shreenath Fabrics 2014 (303) ELT 540 (Guj.)***. He further relied on the decision of Hon'ble High Court of Himachal Pradesh in the case of ***Commissioner of Central Excise vs. Auro Weaving Mills 2017 (345) ELT 350 (H.P.)*** to say that board circulars are binding on department so long as they remain in operation and not open to department to raise contention contrary to such circulars. He also relied on the decision of the Hon'ble Punjab and Haryana High Court in the case of ***Commissioner of***

**Central Excise vs. Malwa Industries Ltd. 2010 (251) ELT 32 (P&H)** to say that Revenue is precluded from challenging the correctness of the circular even on the ground of same being inconsistent with statutory provisions. He further submits that the beneficial circulars to be applied retrospectively while oppressive circular applicable prospectively as held by the Hon'ble Apex Court in the case of **Suchitra Components Ltd. Vs. Commissioner of Central Excise, Guntur 2007 (208) 321 (S.C.)**. Therefore, he submits although on merits, they have no case, but demands from 15.05.2014 by classifying their product under Chapter Heading 8437 are not sustainable. In alternate, the Ld. Counsel for the appellant submits that it is held that they are liable to pay duty, in that circumstances, they are entitled to take cenvat credit on inputs used in manufacturing of their final product i.e. parboiling machines.

4. On the other hand, the Ld. AR reiterated the findings of the impugned orders and submits that if the decision of this Tribunal in the case of appellant, namely, **Jyoti Sales Corporation vs. CCE, Panchkula-2011 (272) ELT 689 (Tri.-Del.)** as held against the appellants and classifying the same under Chapter Heading No. 8419. Therefore, they are liable to pay duty by classifying their products under Chapter Heading No. 8419 of CETA.

5. Heard the parties and considered the submissions.

6. On careful consideration of submission made by both sides, the relevant portions of the circulars are expected herein below:-

| <i>Circular No.</i>                    | <i>Relevant Portion</i>                                                                                                                                                                                                                                                       |
|----------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 924/14/2010-<br>CX dated<br>19.05.2010 | <i>Therefore, Board is of the view that Rice 5.0 parboiling machinery and drier which are essential for use in conjunction with the rice mill will merit classification under heading 8437</i>                                                                                |
| 982/06/2014<br>dated<br>15.05.2014     | <i>Circular No. 924/14/2010-CX. Dated 19.05.2010 is rescinded and it is directed that classification of rice par-boiling machine and dryer may be made under CETH 8419. Necessary action to protect the revenue interest in respect of past clearances may also be taken.</i> |

Therefore, the facts are not in dispute that for the period prior to 15.05.2014, the circular dated 19.05.2010 was in operation. In that circumstance, it is to be seen that whether the circular dated 19.05.2010 is binding on the revenue authorities during the period in question or not? Admittedly, the said issue has been examined by the Hon'ble Apex Court in the case of ***Paper Products Ltd. (supra)*** wherein the Hon'ble Apex Court observed as under:-

*“5. It is clear from the above said pronouncements of this Court that, apart from the fact that the Circulars issued by the Board are binding on the Department, the Department is precluded from challenging the correctness of the said Circulars even on the ground of the same being inconsistent with the statutory provision. The ratio of the judgment of this Court further precludes the right of the Department to file an appeal against the correctness of the binding nature of the Circulars. Therefore, it is clear that so far as the Department is concerned, whatever action it has to take, the same will have to be consistent with the Circular which is in force at the relevant point of time.”*

Further, in the case of ***Dhiren Chemical Industries (supra)***, the Hon'ble Apex Court observed as under:-

*“9. We need to made 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.”*

Further, the Hon’ble Apex Court came to the occasion to examine the said issue again in the case of ***Kalyani Packaging Industries (supra)*** wherein the Hon’ble Apex Court observed as under:-

*“6. 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. Where 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.”*

Further, in the case of ***Hindustan Coca-Cola Beverages Pvt. Ltd. (supra)*** , the Hon’ble Allahabad High Court observed as under:-

*“18 The law is settled that the circulars issued in exercise of statutory power by the departments are binding upon the authorities and the officials of the department.”*

7. We take a note of the fact that in the case of ***UFLEX Ltd. (supra)*** this Tribunal again observed as under:-

*“6. We find that the principles laid down by the Hon’ble Supreme Court in the case of Cadbury India Ltd. : [2006 \(200\) E.L.T. 353](#) (S.C.) are*

*applicable to the present case. The Hon'ble Supreme Court held that the Department is also bound by the Circular dated 13-2-2003."*

Further, in the case of **Shreenath Fabrics (supra)**, the Hon'ble Gujarat High Court observed as under:-

*"4.3 While it may be that when the appeal was preferred, the circular dated 17-8-2011 was not issued. However, it appears from record that the appeal was posted before the Court first time on 11-12-2011 and the notice was issued on 12-11-2012. At the time of issuance of notice in the appeal, the circular dated 17-8-2011 was very much in force and the monetary limit of 10 lakhs provided therein was applicable. Had the said aspect been pointed out to the Court, the Court would not have issued the notice. In any way, when this appeal has come up for consideration, the circular is in vogue and the monetary limit applies. We, therefore, do not find it necessary to go into the merits of the appeal, as the disputed amount in the present appeal is below 10 lakhs.*

*4.4 The department is bound by its own Circular and the instruction thereof. We are informed that no other circular withdrawing or reducing the monetary limit has been issued by the Department and circular dated 17-8-2011 hold the field as far as the prescription of monetary limit for filing appeal before High Court is concerned. It is pertinent to mention that we have taken the similar view in various tax appeals.*

*5. Accordingly, appeal is dismissed considering the monetary limit prescribed in the abovementioned circular dated 17-8-2011. While dismissing the appeal on the said ground alone, it is made clear that this Court has not gone into nor expressed anything on merits. The questions raised by the department in the appeal are kept open to be decided in appropriate case."*

8. In view of the above discussions, as the circular dated 19.05.2010 was in operation during the period in question, therefore, we hold that the said circular is binding on the departmental officers.

9. Further, we take a note of the fact that in the case of **Auro Weaving Mills (supra)** the Hon'ble Himachal Pradesh High Court has also observed that the Board Circulars are binding on department so long as they remain in operation and not open to department raise contention contrary to such circulars.

10. We also take a note of the fact that in the case of **Malwa Industries Ltd. (supra)** the Hon'ble Punjab and Haryana High Court has observed that the Revenue is precluded from challenging the correctness of the circular even on the ground of same being inconsistent with statutory provisions. It goes further to limit the right of the revenue to file an appeal against the correctness of the binding nature of the circular. Therefore, there is no escape from the conclusion that the circular is binding on the revenue.

11. Further, we take note of the fact that in the case of **Suchitra Components Ltd. (supra)** as held that the beneficial circulars to be applied retrospectively while oppressive circular applicable prospectively. Admittedly, the circular dated 15.05.2014 is against the appellants, therefore, the same is to be operative w.e.f. 15.05.2014 and for the period prior to 15.05.2014, the appellants are entitled for the benefit of the Circular Dated 19.05.2010 by classifying their products under Chapter Heading No. 8437 of CETA.

12. We also take a note of the fact that the inputs used in manufacturing of final product are dutiable on which the appellant has discharged their duty liability. The said cenvat credit is also available to the appellant if same is taken into consideration then duty liability calculated by the adjudicating authority is not correct.

13. In view of above analysis, we hold that for the period prior to 15.05.2014 if the appellants have classified their products in question

under Chapter Heading No. 8437 of CETA, no demand is sustainable in terms of the Circular No. 924/14/2010-CX dated 19.05.2010.

14. In result, the impugned orders for demanding duty from the appellants are set-aside. Consequently, no penalties are imposable.

15. In view of the above, the appeals are allowed.

*(Operative part of the order pronounced in the Court)*

**(Bijay Kumar)**  
Member (Technical)

**(Ashok Jindal)**  
Member (Judicial)

G.Y.