

Inconsistency and binding effect of Board circulars

Introduction

Under section 37B, which is titled “Instructions to Central Excise Officers”, the Central Board of Excise and Customs (CBEC or Board), shall issue instructions to officers which is binding on them. These instructions or orders can be for the purpose of ensuring uniformity in the classification of excisable goods or with respect to levy of duty of excise on goods. However, such orders cannot be passed to direct any officer to dispose of a case in a particular manner or interfere with the discretion of the Commissioner (Appeals).

The trade notice has a legitimate source of law and the same is binding on the departmental officers concerned. However if it is erroneous, it should be withdrawn. Authorities cannot take different stands in different states and trade notice issued by customs house will be binding on all customs authorities.

Binding Nature of Board Circulars

It is well established in law today that Board Circulars are not binding on the Supreme Court, High Court or the Tribunal. Departmental clarifications are also not binding on the assessee. These judicial bodies, as well as the assessee, can take a view different from that taken in the Board Circular.

Also, even if it be contended that a circular is not issued under section 37B, circulars issued have to be treated as if issued under the said Section and the Department will be stopped from arguing that the circular is not valid, this was held by Supreme Court in one of its judgments.

The Supreme Court also held that such circulars are not advisory in character but binding on central excise officers. The Supreme Court went on to add that the Department cannot take a plea that the circular is contrary to the statute since consistency and discipline is more important than winning or losing a case.

Thus the circulars issued by a department are binding on that department and there can be no argument against those circulars. However the circulars cannot override the notifications, it was held by Supreme Court, and after the notification is issued, the Board cannot issue a circular and add a new condition which restricts the scope of exemption notification.

The term ‘binding effect’ can be implied in the following manner

- If the Departmental circulars are favorable to the assessee, they bind revenue even if they are contrary to interpretation of law by Supreme Court. This does not hold true if the Circulars are against assessee, who are bound by provisions of law.
- The clarifications/circulars issued by the Central Government and of the State Government represent merely their understanding of the statutory provisions. They are not binding upon the court. It is for the Court to declare what a particular provision of statute says. A circular which is contrary to the statutory provisions has really no existence in law.
- Circulars will be binding on the Revenue even if offering a different interpretation than the one of the Supreme Court.

It was held by high court that the Board is not empowered to issue circulars contrary to Tribunal decisions and instead it has to take up the matter in appeal.

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On the whole, it can be said that the quasi judicial authorities, tribunals, high court, supreme court are not bound by the circulars but the department cannot take a view contrary to it even if it is inconsistent with the decision of the Supreme Court.