

A M/S. SANDUR MICRO CIRCUITS LTD.  
v.  
COMMISSIONER OF CENTRAL EXCISE, BELGAUM  
(Civil Appeal No. 7177 of 2005)

AUGUST 13, 2008

B [DR. ARIJIT PASAYAT AND DR. MUKUNDAKAM  
SHARMA, JJ.]

C *Central Excises and Salt Act, 1944 – s.5A – Notification under – Circular issued by Central Board of Excise and Customs in direct conflict with the statutory Notification – Effectiveness of the circular – Held: The circular cannot take away the effect of the Notification.*

D **Circular No.42 of 1997 dated 19-9-1997 issued by the Central Board of Excise and Customs was in direct conflict with a Notification statutorily issued under s.5A(1) of the Central Excises and Salt Act, 1944, viz. No. 2/95-CE dated 4-1-1995 as amended by Notifications Nos. 21/97-CE dated 11-4-1997, 100/95-CE dated 2-6-1995 and 7/96-CE dated 1-7-1996.**

F **The Customs, Excise and Service Tax Appellate Tribunal (CESTAT) held that the Notification had overriding effect over the Circular and hence the assessee's claim of liability to pay 50% of the aggregated customs duty on the goods cleared to the Domestic Tariff Area (DTA) was not legally tenable.**

G **In the instant appeals, the assessee-appellants submitted that the Circular having been issued on basis of representations made by various assessees, the Notification would not stand on the way of relief being granted to them on basis of the said circular.**

**Dismissing the appeals, the Court**

H

HELD: A Circular cannot take away the effect of Notifications statutorily issued. In fact, in certain cases it has been held that the Circular cannot whittle down the Exemption Notification and restrict the scope of the Exemption Notification or hit it down. In other words it was held that by issuing a circular, a new condition thereby restricting the scope of the exemption or restricting or whittling it down, cannot be imposed. The principle is applicable to the instant cases also, though the controversy is of different nature. [Para 5] [78,E-F]

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 7177 of 2005

From the final Judgment and Order No. 1173/2005 dated 19.7.2005 of the Customs, Excise and Service Tax Appellant Tribunal, Bangalore in Appeal No. E/1139/2002

WITH

C.A. No. 5025 & 5024 of 2008 & 6897 of 2005

A.R. Madhav rao, Monish Panda and M.P. Davanath for the Appellant.

Navin Prakash and B. Krishna Prasad for the Respondent.

The Judgment of the Court was delivered by

**Dr. ARIJIT PASAYAT, J.** 1. Leave granted in SLP (C) Nos. 16719 of 2006 and 16947 of 2006.

2. In all these appeals common questions are involved and are directed against the judgment and final order passed by the Customs, Excise and Service Tax Appellate Tribunal (in short the 'Tribunal'). Since in appeals filed by the appellants common question of law is involved, there is no need to elaborately deal with the factual aspects. Question is the effect of a circular issued by Central Board of Excise and Custom (in short the 'Board') i.e. Circular No. 42 of 1997 dated 19.9.1997. The

A CESTAT held that the Notification No. 2/95-CE dated 4.1.1995 as amended by Notifications Nos. 21/97-CE dated 11.4.1997, 100/95-CE dated 2.6.1995 and 7/96-CE dated 1.7.1996 shall have overriding effect over the Circular. It held that there is no manner of doubt that the appellant's claim of liability to pay 50% of the aggregated customs duty on the goods cleared to the Domestic Tariff Area (in short the 'DTA') is not legally tenable. It was held that the Circular was in direct conflict with the Notification No. 2/95.

C 3. Learned counsel for the appellant in each case submitted that the Circular was issued on the basis of representations made by various assesseees and therefore the Notification cannot stand on the way of relief being granted.

D 4. Learned counsel for the respondent on the other hand submitted that the Notification which is statutorily issued has overriding effect because the Notifications are issued in exercise of powers conferred by sub-section (1) of Section 5A of the Central Excises and Salt Act, 1944 (in short the 'Act').

E 5. The issue relating to effectiveness of a Circular contrary to a Notification statutorily issued has been examined by this Court in several cases. A Circular cannot take away the effect of Notifications statutorily issued. In fact in certain cases it has been held that the Circular cannot whittle down the Exemption Notification and restrict the scope of the Exemption Notification or hit it down. In other words it was held that by issuing a circular a new condition thereby restricting the scope of the exemption or restricting or whittling it down cannot be imposed. The principle is applicable to the instant cases also, though the controversy is of different nature.

G 6. The appeals fail and are dismissed.

B.B.B.

Appeals dismissed.