

GIB/DL/RATAN MELTING/14-10-2008/SC-8**Supreme Court Category :** Others**State :** Delhi**Order No.:** GIB/DL/RATAN MELTING/14-10-2008/SC-8**Name of Entry :**
RATAN MELTING & WIRE INDUSTRIES**Date :** 14-10-2008**Breif Issue :****Fact of the Case:**

Learned counsel for the Union of India submitted that the law declared by this Court is supreme law of the land under Article 141 of the Constitution of India, 1950 (in short the 'Constitution'). The Circulars cannot be given primacy over the decisions.

Learned counsel for the assessee on the other hand submitted that once the circular has been issued it is binding on the revenue authorities and even if it runs counter to the decision of this Court, the revenue authorities cannot say that they are not bound by it. The circulars issued by the Board are not binding on the assessee but are binding on revenue authorities. It was submitted that once the Board issues a circular, the revenue authorities cannot take advantage of a decision of the Supreme Court. The consequences of issuing a circular are that the authorities cannot act contrary to the circular. Once the circular is brought to the notice of the Court, the challenge by the revenue should be turned out and the revenue cannot lodge an appeal taking the ground which is contrary to the circular.

Further, circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court

Decision of Advance Ruling Authority :**Decision:**

In this decision, the five-member constitutional bench agreed with the view taken in the case of Kalyani Packaging Industry. It was held that the circulars and instructions issued by the Board are no doubt binding in law on the authorities under the respective statutes, but when the Supreme Court or the High Court declares the law on the question arising for consideration, it would not be appropriate for the Court to direct that the circular should be given effect to and not the view expressed in a decision of this Court or the High Court. So far as the clarifications/circulars issued by the Central Government and of the State Government are concerned they represent merely their understanding of

the statutory provisions. They are not binding upon the court.

It is for the Court to declare what the particular provision of statute says and it is not for the Executive. Looked at from another angle, a circular which is contrary to the statutory provisions has really no existence in law. Also, in passing, it was also concluded that it is wrong to say that revenue department cannot challenge the provisions clarified in a circular in appeal as it would be against the concept of majesty of law and would tantamount to depriving the right of appeal to the revenue department. Hence, this decision took a dubious stand as regards binding nature of the board circular. It pronounced that although board circulars are binding on the department but simultaneously, the revenue authorities have also right to file appeal against the clarifications given in the board circulars