

**Circular No. 1006/13/2015-CX
dated the 21th September,2015**

**F.No.96/90/2015-CX.1
Government of India
Ministry of Finance, Dept. of Revenue
Central Board of Excise and Customs
New Delhi**

dated the 21.09.2015

To

Principal Chief Commissioner / Chief Commissioner of Central Excise, Service Tax and Customs (All),
Principal Commissioner of Central Excise, Service Tax and Customs (holding charge of Chief
Commissioner) (All),
Web-master, CBEC

Madam/sir,

Subject: - Clarification regarding binding nature of circular and instructions.

A large number of judgements have been delivered by the Hon ble Supreme Court on various aspects of Central Excise, Service Tax or Customs consequent upon the constitution of special bench on 28.02.2015 to expeditiously decide appeals in Indirect taxes. However, there may be Board circulars on some of these issues which are contrary to the judgement delivered by Hon ble Supreme Court. The issue is whether the field officers are bound by such circulars, during the period the circular has not been rescinded.

- 2. In this regard, attention is invited to the judgement of Hon ble Supreme Court dated 14thOctober2008 [2008(231) E.L.T.22(SC)/2008-TIOL-104-SC-CX-CB] in case of M/s Ratan Melting & Wire Industries Vs Commissioner of Central Excise, Bolpur. In the said judgement Hon ble Supreme Court has held at para 6 & 7 that-

"6.Circular 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 to a view expressed in a decision of this court or the High Court. So far as the clarification/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 other angle, a circular which is contrary to the statutory provisions has really no existence in law...

7 .. to lay content with the circular would mean that the valuable right of challenge would be denied to him and there would be no scope for adjudication by the High Court or the Supreme Court. That would be

against very concept of majesty of law declared by Supreme Court and the binding effect in terms of Article 141 of the Constitution

- 3. Therefore, it is clarified that Board Circulars contrary to the judgements of Hon ble Supreme Court become non-est in law and should not be followed. Reference of such circulars should be made to the Board so that further action of rescinding these circulars can be expeditiously taken up. Board may also initiate such action suo-moto. All pending cases on the issue, including those in the Call-Book, decided after the date of the judgement should, conform to the law laid by the Hon ble Supreme Court or High Court, as the case may be, irrespective of whether the circular has been rescinded or not.
- 4. The above direction would also apply to the judgements of Hon ble High Court where Board has decided that no appeal would be filed on merit. However where appeal has been filed by revenue against the High Court s order, pending adjudication should be transferred to the Call-Book and such appeals should be kept alive.
- 5. Difficulty experienced, if any, in implementing the circular should be brought to the notice of the Board. Hindi version would follow.

(Santosh Kumar Mishra)
Under Secretary to the Government of India