

HC's judgment to prevail over CBIC Circular in case of contrary views by HC and the Circular

In C.C.E. & S.T.-Surat-I v. Palak Designer Diamond Jewellery [Excise Appeal No.10239 of 2020 decided on July 23, 2021] the revenue filed an appeal against Order-in-Appeal wherein the Commissioner (Appeals) remanded the matter on the ground of adjudication by the incompetent authority (Joint Commissioner) and on the ground of violation of principle of natural justice by relying on board's circular.

Revenue contended that the direction of the Commissioner (Appeals) in as much as demand of more than Rs. 2 Crores be made answerable to the Commissioner is not legal and correct in view of hon'ble Gujarat High Court in the Civil Application No.13128 of 2019 dated August 2, 2019.

The Hon'ble CESTAT, relied on the Hon'ble Supreme Court case of ***Pahwa Chemicals Pvt. Ltd. v. Commissioner Of Central Excise- Delhi [2005 (181) ELT 339 (SC)]*** and stated that merely on the basis of board's circular it cannot be said that the Joint Commissioner had no jurisdiction to issue Show Cause Notice and adjudicate the same, so long the said officer is also Central Excise Officer in terms of Section 2(b) of Central Excise Act, 1944.

It is the settled law that when both board's circular and the judgment of Court of law is prevailing and the judgment has contrary view than to the board circular in such case the Court's judgment will prevail over the board circular.

Following this principle in the present case also when there is a clear observation of the hon'ble Gujarat High Court in the present case itself that will prevail over the board circular which was relied upon by the learned Commissioner (Appeals). **Accordingly, the Joint Commissioner has jurisdiction not only to issue the Show Cause Notice but also to adjudicate the same.**

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