REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7177 OF 2005

M/s. Sandur Micro Circuits Ltd. .....Appellant

Versus

Commissioner of Central Excise, Belgaum ....
Respondent

With
CIVIL APPEAL NO. OF 2008
(Arising out of SLP (C) No. 16719 of 2006)

With
CIVIL APPEAL NO. OF 2008
(Arising out of SLP (C) No. 16947 of 2006)

With
CIVIL APPEAL NO. 6897 OF 2005

J U D G M E N T

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 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.

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

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').

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.

6. The appeals fail and are dismissed.

....J.
(Dr. ARIJIT PASAYAT)

....J.
(Dr. MUKUNDAKAM SHARMA)

New Delhi,
August 13, 2008