There was a view that circulars are not binding on the assessee, however it is bound on revenue. The principle follows from the legal maxim of "executive estoppel". In this regard, we may refer to the decision of the House of Lords in the matter of R.V. National Asylum Support Service [(2002) 1 W.L.R.2956] and its interpretation of the decision in Pepper v. Hart [(1993) A.C. 593] on the question of 'executive estoppel'. In the former decision, Lord Steyn stated:-

'If exceptionally there is found in the Explanatory Notes a clear assurance by the executive to Parliament about the meaning of a clause, or the circumstances in which a power will or will not be used, that assurance may in principle be admitted against the executive in proceedings in which the executive places a contrary contention before a court.'

A similar interpretation was rendered by Lord Hope of Craighead in Wilson v. First County Trust Ltd., [2004] 1 A.C. 816, wherein it was stated: 'As I understand it [Pepper v. Hart], it...
recognized a limited exception to the general rule that resort to 'Hansard' was inadmissible. Its purpose is to prevent the Executive seeking to place a meaning on words used in legislation which is different from that which ministers attributed to whose words when promoting the legislation in Parliament. Paper v. Hart was quoted with approval in R & B Falcon (A) Pty Ltd vs Commissioner Of Income Tax [301 ITR 309 SC].

In Spentex Industries v. CCE [(2015) 52 GST 909], Hon'ble Supreme Court found that circular issued by Central Government is binding. It said that it is to be borne in mind that it is the Central Government which has framed the Rules as well as issued the notifications. If the Central Government itself is of the opinion that the rebate is to be allowed on both the forms of excise duties the government is bound thereby and the rule in-question has to interpreted in accord with this understanding of the rule maker itself.

In Collector of Central Excise, Patna v/s Usha Martin Industries [1997 (7) SCC 47, AIR 1997 SC 3871], Hon'ble Supreme Court held that through a catena of decisions this Court has pronounced that Revenue cannot be permitted to take a stand contrary to the instructions issued by the Board. It is a different matter that an assessee can contest the validity or legality of a departmental instruction. But that right cannot be conceded to the department, more so when others have acted according to such instructions, vide Collector of Central Excise. Bombay vs. Collector of Central Excise [1996(88) ELT 638], Ranadey Micronutrients vs. collector of Central Excise [1996(87) ELT 19], Poulouse and Mathen vs. collector of central Excise [1997(90) ELT 264, British Machinery Supplies Co. vs. Union of India [1996(86) ELT 449]. Of course the appellate authority is also not bound by the interpretation given by the Board but the assessing officer cannot take a view contrary to the Board's interpretation.

Usha Martin judgment was overruled by the Constitutional bench of the Apex Court in the case of Collector of C. Ex., Vadodara v/s Dhiren Chemical Industries [2002 (139) ELT 3 (SC)], but the bench reiterated the principle- "We need to make it clear that, regardless of the interpretation that we have placed on the said phrase, if there are circulars which have been issued by the Central Board of Excise and Customs which place a different interpretation upon the said phrase, that interpretation will be binding upon the Revenue". Thus, it was
clearly held that the Board circulars will be binding on Department even if a different interpretation has been given by the Supreme Court.

Thus, the controversy could have been said to have settled that the Board circulars are binding on the Department. However, the issue could not remain settled for much longer and was again stirred. In Kalyani Packaging Industry v. Union of India and Anr (2004 (6) SCC 719), it was noted that para 9 (para 11 in SCC) of Dhiren Chemical case (2004 (6) SCC 722) is being misunderstood. It, therefore, becomes necessary to clarify para 9 (para 11 in SCC) of Dhiren Chemical case (2004 (6) SCC 722). The Constitution Bench of the Supreme Court clarified in case of Commissioner Of Central Excise v M/S. Ratan Melting & Wire (2008) 231 ELT 22 SC that,

"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."

**After the judgment following position of law emerges:**

(a) Departmental clarifications are binding on respective authorities and not on Court. It is for the court to declare what the particular provision of statute says and it is not for the Executive.

(b) Quasi-judicial authorities are not bound by circulars/instructions issued by the higher authorities as held in CCE v. Minwool Rock Fibres [(2012) 278 ELT 581 SC].

(c) CBE&C’s circulars are issued for the guidance of the authorities. These circulars can be treated as evidence but these circulars are not binding on quasi-judicial authorities as held in UOI v. Madras Steel Re-rollers Association [(2012) 278 ELT 584 SC].

(d) Circulars are not binding upon the assessee and he can always dispute the applicability and the correctness of a administrative circular as held in Man Industries v. CC [(2006) 202 ELT 433].

Thus departmental circulars has reached to become ineffective. It stopped serving its purpose of bringing certainty and uniformity in tax laws. Section 168(1) of the CGST Act tries to bring some certainty in the situation. It says,

"The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions."

It is clear from the section that circulars are issued for the purpose of uniformity in the implementation of the Act. Further, it is a legislative mandate that all persons employed in the implementation of the Act shall observe and follow such orders, instructions and directions. Persons employed in the implementation of the Act has not been defined in the
Act, but quasi-judicial authorities are certainly falls within the definition of persons employed in the implementation of the Act. This provision is likely to bring some certainty and sanctity in departmental circulars.

*The author is an Advocate and can also be reached at custom.excise@gmail.com*

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