INTRODUCTION:

Law – the most complicated phenomenon of a constitution. Howsoever cleverly drafted, creates ambiguity and litigation. “We see what we want to see” – both the assessees and department adopt this policy and interpret the language of law accordingly. Result - confusion, ambiguity and litigation. “Circulars” were inserted in law to serve as a tool to clarify an existing provision and remove the ambiguity. In Central Excise Law, Circular is issued by the Central Board of Excise & Customs (CBEC) for bringing the uniformity in approach related to Central Excise provisions. But whether these Circulars issued by Board are binding or may be ignored by department, it has always been a matter of confusion due to conflicting decisions. Herein we will follow and discuss the judgments of the Apex Court regarding the binding nature of the Departmental Circular.

STATUTORY PROVISIONS:

The Board is empowered under Section 37B of the Central Excise Act, 1944 to issue instructions/orders to central Excise Officers if it is necessary for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods.

The Section 37B is reproduced hereunder for ready reference:

**SECTION 37B:** The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to
the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board:

Provided that no such orders, instructions or directions shall be issued-

(a) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or

(b) so as to interfere with the discretion of the Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.

Thus, circulars are meant for an industry, rather than particular assessee or case.

ISSUES INVOLVED:

The first and foremost issue is that whether the Circulars issued by the Board will be binding on the Revenue? Whether the Board circulars will be binding on the Assessee? Also, whether the Circulars will be binding on the Quasi Judicial Bodies i.e. the Original Adjudicating Authority (Deputy/Additional/Assistant Commissioner), Commissioner (Appeals) and the Tribunal? Whether, the High Court and the Supreme Court will also be bound by these circulars? Can department challenge the Circular issued by the Board when assessee has a right to challenge the same?

These issues were taken before the courts and were settled by the Apex Court in their various pronouncements as discussed hereunder.

JUDICIAL PRONOUNCEMENTS:

Initial Judgments:

Before the landmark judgment of hon'ble supreme Court in the case of M/s Dhiren Chemicals a no. of judgments were given which are analyzed as follows:

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<tr>
<th>CASE LAW WITH CITATIONS</th>
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<tr>
<td>Ranadey Micronutrients v/s Collector of Central Excise [2002-TIOL-184-SC-CX]</td>
<td>The circulars issued under Section 37B are binding on the Central Excise officers, however, if it is contrary to statute it must be withdrawn. While the circular remains in operation, Revenue is bound by it and cannot plead that it is not valid as it is inconsistent with a statutory provision.</td>
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<tr>
<td>Case</td>
<td>Ruling</td>
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<td>Collector of Central Excise, Bombay v/s Kores (India) Limited [2002-TIOL-414-SC-CX]</td>
<td>Supreme Court ruled that Departmental circulars issued by Board are binding on departmental officers but they are not binding on the Tribunals and Courts.</td>
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<td>Collector of Central Excise, Patna v/s Usha Martin Industries [2002-TIOL-400-SC-CX]</td>
<td>Apex Court held that circulars, whether issued before December, 1985 or thereafter have the same binding effect on the department. Further held that the assessee has the right to contest the validity or legality of a departmental instruction but the Department does not have this right. It was further held that 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.</td>
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<tr>
<td>Paper Products Ltd v/s Commissioner of Central Excise [2002-TIOL-84-SC-CX]</td>
<td>Circulars issued by Board under Section 37B are binding on the Department and it cannot take a stand contrary to the instructions issued by the Board. However, an assessee can contest the validity or legality of such instructions.</td>
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**Landmark Judgment In Dhiren Chemical Industries Case:**

After the above stated no. of judicial pronouncements, a five member constitutional bench of Supreme Court delivered the landmark judgment on this issue in the case of Collector of C. Ex., Vadodara v/s Dhiren Chemical Industries [2002 (139) ELT 3 (SC)]. In this case, it was held that if there are circulars issued by the CBEC which place an interpretation which is inconsistent with the interpretation taken by the Supreme Court, then Revenue will be bound to follow the interpretation taken by the Board. 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.
After Dhiren Chemical Industries Judgment:

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<td>CC, Calcutta v/s M/s Indian Oil Corporation Ltd [2004-TIOL-23-SC-CUS]</td>
<td>The matter was referred to the Constitution Bench for deciding the binding nature of circulars of Revenue Boards.</td>
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<td>Simplex Castings Ltd v/s Commissioner of Customs, Vishakhapatnam [2003-TIOL-68-SC-CX]</td>
<td>It was once again held that it was not open to the Department to prefer appeal before the Tribunal contrary to what has been laid down in the Circular.</td>
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<td>Kalyani Packaging Industry v/s Union of India [2004-TIOL-82-SC-CX]</td>
<td>It was held that the Board circular will not prevail over the judgment of the Supreme Court. However, in cases where benefits of exemption Notification had already been granted, the Revenue would remain bound. The purpose was to see that such cases were not reopened.</td>
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<td>Commissioner of Central Excise, Bolpur v/s M/s Ratan Melting &amp; wire Industries, Calcutta [2005-TIOL-41-SC-CX-LB]</td>
<td>In this case, the Supreme Court’s view in Dhiren Chemicals case was referred to five judge bench.</td>
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<td>Union of India &amp; Others v/s Arviva Industries (I) Ltd &amp; Others [2007-TIOL-12-SC-CX]</td>
<td>In this case it was held that there was no need to refer the matter to the larger bench as it was well settled that the Board Circulars were binding on the Department.</td>
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<td>Union of India v/s Inter Continental, India [2008-TIOL-83-SC-Cus]</td>
<td>The Supreme Court held that Board Circular cannot override Notification. It was held that after the notification is issued, Board cannot subsequently...</td>
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issue a circular and add a new condition which restricts the scope of the exemption notification.

**M/s Padinjarekara Agencies Limited v/s State of Kerala [2008-TIOL-19-SC-CT]**

It was held that Adjudicating Authority was bound by Departmental Circular but the assessee is not bound by the same.

**CCE, Mumbai v/s M/s Rajpurohit GMP India Ltd [2008-TIOL-200-SC-CX]**

It was held that Circulars are binding on the Department.

**Judgment in Ratan Melting & Wire Industries Case:**

The landmark judgment given in the case of Dhiren Chemicals was reversed in the case of **Commissioner of Central Excise, Bolpur v/s M/s Ratan Melting & Wire Industries [2008-TIOL-194-SC-CX-CB]**. In this case, it was held that the Board circular will not prevail over the Order of the Supreme Court. It was further held that a circular which is contrary to the statutory provisions has no existence in law.

**After Ratan Melting & Wire Industries Judgment:**

The decision given in the case of Ratan Melting & Wire Industries was reiterated in the following cases:

**CCE, Mumbai v/s M/s Hindoostan [2009-TIOL-54-SC-CX]**

**CCE, Nagpur v/s M/s Gurukripa Resins Pvt Ltd [2011-TIOL-67-SC-CX]**

Further, it was held in the case of **State of Tamil Nadu & Anr v/s India Cements Ltd & Anr [2011-TIOL-42-SC-CT]** that circulars are binding on Revenue and department has no right to challenge the same on the grounds that it is inconsistent with the statutory provisions.

**RECENT JUDGMENT:**

Recently, the Hon’ble Supreme Court in their judgment given in the case of **Commissioner of Central Excise, Bhopal v/s Minwool Rock Fibres Ltd [2012-TIOL-18-SC-CX]** has held that the departmental circulars are not binding on assessee or quasi judicial authorities or courts.

**CONCLUSION:**

The judicial pronouncements categorically discussed here above clarifies the issue to some extent. Since nothing has been mentioned in the Central Excise law about the binding nature of circulars, matter has always gone to Supreme Court which is being decided every time. After the decision of **M/s Minwool**, question has arisen whether the decision of **M/s**
Ratan Melting has lost its relevance. At our sight, the decision in the case of M/s Minwool Rock Fibres has simply clarified the things which were already settled by previous judgments of Apex Court on the even issue. This decision simply stated that the board circulars are not binding on the assessees or quasi judicial authorities. On the other hand, in the case of M/s Ratan Melting, it was held that in case of conflict between the interpretation taken by Supreme Court and interpretation taken by a circular, decision of Supreme Court will be binding. Thus, the two decisions have been delivered in different contexts and decision of M/s Ratan Melting will come into play only if there is conflict between the interpretation taken by circular and Supreme Court. In such cases, as per this decision, the judgment of Supreme Court will have precedence and department will be bound to follow it. Rest things are already settled by various judgments.

As of now, Circulars are not binding on the assessees, quasi judicial authorities, Tribunals, High Court and Supreme Court. Only the departmental sub-ordinates are bound to follow the same. However, in case of conflict in interpretation taken in circular and interpretation taken by Supreme Court, the latter will have precedence. Thus, as it is always thought after every judgment of Supreme Court, the issue seems to have settled, but chances of litigation are always there... as it is law... which is never sure...

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