

Legislature rules – Executive follows and Judiciary reviews – its democratic India!!!

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The three organs of the government which we know as the executive, the judiciary and legislature represent the people and their will in our country and are responsible for the smooth running of a democratic government in our society. The legislature is the law-making body, the executive is responsible for the enforcement of all such laws and the judiciary deals with the cases that arise from a breach of law. Thus they are all interlinked organs of the government and their roles and functions tend to overlap with each other, as it isn't possible to separate the three from each other completely. This has been the cause for not only serious political debate in our country but has raised many philosophic and jurisprudential debates among legal scholars and the law fraternity. Whether there should be a complete separation of powers or a well co-ordinated system of distribution of powers thus becomes the focal point of contemplation.

The legislative and executive wings are closely connected with each other. The, executive is responsible to the legislature for its actions and derives its powers from the legislature. However, The Parliament does not enjoy complete sovereignty, as its laws are subject to judicial review by the Supreme Court of India.

Any law will be passed by legislature (passed in both the houses) after following the procedure as laid down in the Indian Constitution and becomes an act once the President gives his assent.

With respect to taxation, the Department of Revenue exercises control in respect of matters relating to all the direct and indirect Union taxes through two statutory Boards namely, the Central Board of Direct Taxes (CBDT) and the Central Board of Excise and Customs (CBEC). The two Boards were constituted under the Central Board of Revenue Act, 1963.

With this little constitutional introduction, now let's understand the formation of CBEC and legal binding of circulars issued by CBEC in relation to judicial pronouncements.

Central Board of Excise and Customs (CBEC) is a part of the Department of Revenue under the Ministry of Finance, Government of India. It deals with the tasks of formulation of policy concerning levy and collection of Customs & Central Excise duties and Service Tax, prevention of smuggling and administration of matters relating to Customs, Central Excise, Service Tax and Narcotics to the extent under CBEC's purview. The Board is the administrative authority for its subordinate organizations, including Custom Houses, Central Excise and Service Tax Commissionerates and the Central Revenues Control Laboratory.

Hence, CBEC is only an administrative body functioning under the executive authority and cannot act beyond its powers. If it acts, then all such acts would become illegal and unconstitutional.

The same view is clarified vide circular number **Circular No. 1006/13/2015-CX dated the 21th September,2015** clarifying 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 whether the circular should be given effect to or 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 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. Looking at it from another angle, a circular which is contrary to the statutory provisions has really no existence in law.

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

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.