Supreme Court Decisions- Whether always Binding?

Dilip K Sheth

< EXECUTIVE SUMMARY >

In our professional practice, many of us specialise in advisory and appellate work in the field of direct and indirect taxes. While rendering such specialised service, we have to ensure that our opinion or advice accords with the latest law on the subject that holds the field. Thus, where there is a Supreme Court decision available on the issue, normally the same is followed where the facts of the case are on all fours. The moot point for consideration is whether the Supreme Court decision on a given issue is always to be followed.

Under Article 141 of the Constitution of India "the law declared by the Supreme Court shall be binding on all Courts within the territory of India". The general belief, thus, is that the Supreme Court decisions are always binding on lower Courts. However, can such belief be regarded as a rule without any exceptions? For an answer, finer aspects of this question are examined.

In this Article, the author has endeavoured to explain the conclusions reached by him after analysing the relevant judicial pronouncements on the following finer aspects of the abovementioned question.

- Conceptual aspects
- What is binding under Article 141 of the Constitution of India?
- What is not so binding?
- High Court and lower Court- bound by the Supreme Court decision
- Supreme Court- How far bound by its own decisions

1 Conceptual Aspects

At the outset, important conceptual aspects may be critically reviewed.

1.1 Supreme Court "makes" law

In terms of Article 141 of the Constitution, the Supreme Court is enjoined to declare law. The term 'declared' is wider than the term 'found' or 'made'. To declare means to announce opinion. Indeed, the term "made" involves a process, while the term "declare" expresses result. The law declared by the Supreme Court is the law of the land. It is a precedent for itself and for all Courts/ tribunals and authorities in India [Rupa Ashok Hurra v Ashok Hurra (2002) 4 SCC 388]. To deny this power to the Supreme Court on the footing that it only "finds" law but does not "make" it, is to make ineffective the powerful instrument of justice placed in the hands of the highest judiciary.

While the position of the Supreme Court is subordinate to the Legislature, it must be recognised that in the Supreme Court's effort to achieve its purpose of 'declaring' the law, creativity is involved. A statute is binding;

The author is member of the Institute. The views expressed herein are the personal views of the author and do not necessarily represent the views of the Institute.

but it is the statute, as interpreted by the Supreme Court that is binding on all other Courts. The Supreme Court is not mere interpreter of the existing law. As a wing of the State, it is a source of the law.

1.2 Purposive interpretation preferred to literal interpretation

In the aforesaid background, rising above the doctrine of literal interpretation, judicial activism has been pleaded in the matter of interpretation of statutes. Having consistently followed such approach, the doctrines of purposive and progressive interpretation have come to prevail in the matter of statutory as well as constitutional interpretation. This, however, is subject to the limitation that the Court cannot rewrite the law in the guise of interpretation.

1.2.1 While 'interpreting' law, the Supreme Court may 'alter' it

Article 141 empowers the Supreme Court to 'declare' the law and not enact it. Hence, observations of the Supreme Court should not be read as statutory enactments. At the same time, this Article recognizes the role of the Supreme Court to alter the law in the course of its function to interpret a legislation so as to bring the law in harmony with social changes.

1.3 Constitutionality

1.3.1 *Where a High Court allows several writ petition declaring a Statute as unconstitutional*

In such a case, if the State appeals to the Supreme Court only in one of the petitions and in that appeal, the Supreme Court upholds the validity of the Act (setting aside the judgement of the High Court), the law declared by the Supreme Court would, in terms of Article 141, be binding on all the petitioners before the High Court and not merely the particular petitioner against whom the State had preferred appeal.

1.3.2 Where a State Government is a party duly represented before the Supreme Court

In such a case, the decision of the Court declaring a State Act as *ultra vires* shall be binding on that State Government, even where no notice, as required by the Code of Civil Procedure, was served upon the Advocate-General.

1.4 Retrospectivity

Where the Supreme Court has expressly made its ratio prospective, the High Court cannot give it retrospective effect. By implication, all contrary actions taken prior to such declaration stand validated.

The doctrine of prospective overruling is applicable to matters arising under the Constitution as well as the statute. Applicability of the doctrine is left to the discretion of the court to be moulded in accordance with justice of the cause and matter before it. If the Supreme Court does not exercise its discretion to hold that the law declared by it would operate only prospectively, High Court cannot of its own hold so. When the Supreme Court interprets an existing law overruling the interpretation given to it earlier and does not lay down any new law, declaration of law by it relates back to the law itself [Sarwan Kumar v Madan Lal Aggarwal (2003) 4 SCC 147].

2 What is Binding under Article 141?

What is binding is the ratio of the decision and not any finding on facts, or the opinion of the Court on any question which was not required to be decided in a particular case.

The law that will be binding under Article 141 would extend only to the observations on the points raised and decided by the Court in a case. Therefore, as a matter of practice, the court does not make any pronouncement, particularly in Constitutional matters, on the points not directly raised for its decision.

General principle of law laid down by the Supreme Court is applicable to every person including those who are not a party to that order.

In other words, it is the principle underlying a decision that is binding. While applying the decision in a later case, therefore, the later Court should try to ascertain the true principle laid down by the previous decision, in the context of the questions involved in that case from which the decision takes is colour.

2.1 *Decisions of House of Lords and Privy Council*

All Courts in India are bound to follow the decisions of the Supreme Court even though the same are contrary to the decisions of the House of Lords or of the Privy Council.

2.2 *To ascertain its binding nature. Judgement to be read as a whole*

A judgement must be read as a whole and the observations from the judgement have to be considered in the light of the question before the Court. It is the principle found upon reading the judgement as a whole in the light of the questions before the Court, that is relevant and not particular words or sentences.

2.3 ***Precedent value of the decision - only on question of law***

A decision is available as a precedent only if it decides a question of law. [Ram Prasad Saruna v Mani Kumar Subba (2003) 1 SCC 289]

2.4 ***Majority view binding - not minority view***

When the Court is divided, it is the judgement of the majority which constitutes the 'law declared' by the Supreme Court and not the view or observations of the judges in minority.

It is immaterial that the conclusion of the majority was arrived at by the several Judges on different grounds or different processes of reasoning.

2.5 ***Ex-parte decision, too, binding***

To determine whether a decision has 'declared Law', it is immaterial whether the Supreme Court gave the decision *ex parte* or after a hearing.

2.6 ***Procedural irregularity-immaterial***

The binding force of a judgement as a precedent is not affected by any procedural irregularity in hearing the case.

2.7 ***Special Leave Petition***

In a Special Leave Petition, there is a 'law declared' if the Court gives reasons for dismissing the Petition. However, there is no law declared where the Court gives no reasons for dismissal.

3 WHAT IS NOT BINDING ?

3.1 ***Certain decisions-not binding***

The following kinds of decisions cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141:

- The decision that is not express
- The decision not founded on reasons
- The decision that does not proceed on consideration of the issue

The later Court would not be bound by those reasons or propositions which were not necessary for deciding the previous case. Conversely, the later Court cannot unnecessarily expand the scope and authority of the precedent. In other words, a judgement cannot be construed as an Act of Parliament. It must be read in the context of the questions that arose for consideration in the case and not as embracing all aspects of every question relating to the subject or laying down principle of universal application. In the absence of parity of situation or circumstances, the reasoning of one decision cannot be applied in another case.

3.2 ***Obiter dicta-not binding***

Only ratio decidendi is binding; *obiter dicta*, that is, the general observations have no binding force. Since an *obiter* is not binding as the law declared under Article 141, it cannot be relied upon solely to hold certain statutory rules as invalid.

◆ Connotation

An *obiter dictum* is an observation made by a Court on a legal question suggested by a case before it, but not arising in such manner as to require the Court's decision. It is not binding as a precedent, because the observation was unnecessary for the decision given by the Court.

◆ Persuasive value

An *obiter* of the Supreme Court though not binding as precedent, is worthy of respect and considerable weight. [Director of Settlements, A P v M R Apparao (2002) 4 SCC 638]

◆ Different nature

While the decision of the Supreme Court cannot be assailed on the ground that certain aspects were not considered or the relevant provisions were not brought to the notice of the Court, the position is different as regards *obiter*.

3.3 ***Decisions per incuriam and sub-silentio-not binding***

These two doctrines constitute exceptions to the rule of precedents. The expression *per incuriam* means 'resulting from ignorance of'. If a decision is rendered per incuriam a statute or binding authority, the same may be ignored. [A-One Granites v State of U.P. (2001)3SCC 537; AIR2001 SC 1203; Salmond on Jurisprudence, 12th Edn. Pg 167]

Another exception to the rule of precedents is the rule of *sub- silentio*. A decision is *sub-silentio* when the point of law involved in the decision is not perceived by the Court or not present to its mind. A decision not expressed, not accompanied by reasons and not proceedings on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgement is not the ratio *decidendi*. This is

the rule of *sub silentio,* in the technical sense when a particular point of law was not consciously determined.

3.4 ***Later decision-not binding if the earlier decision is by larger bench***

If the later decision is that of a larger Bench, the previous decision will be deemed to have been overruled. Thus, the judgement of a 3-judge Bench is binding on a Bench of 2 Judges. However, where there is a conflict between two decisions of the Supreme Court, it is the later decision that will be binding on the lower Courts, unless the earlier decision was by a larger Bench. [Mattu Lal v Radhe Lal, A 1974 SC 1596; State of UP v Ram Chandra, A 1976 SC 2547]

3.5 ***Supreme Court's observations on facts-not binding***

Statements on matters other than 'law', e.g., facts, have no binding force, for the facts of two cases are generally not similar. On this principle, decision on a question of sentence cannot be regarded as 'law declared A reference may, however, be made to the Bombay High Court decision [D Navinchandra v Union of India (1989) 43 ELT 266 (Bom)3 in which it was held that if the facts were same, the Supreme Court decision was a binding precedent.

3.6 ***Decision based on concession-not binding***

No law is laid down when a point is disposed of on concession. If the court proceeds on the basis of *concession* made by a party, the decision cannot by any stretch be termed a binding precedent and cannot have the sanctity and solemnity of a binding precedent. [Kulwant Kaur v Gurdial Singh Mann (2001) 4 SCC 262; Director of Settlements, A P v M R Apparao (2002) 4 SCC 638]

4 HIGH COURT AND LOWER COURTS - BOUND BY SUPREME COURT DECISIONS

4.1 ***Lower Courts dutybound to follow***

When some principle has been laid down by the Supreme Court or some practice is deprecated, it is the duty of the High Court or lower Court to follow the decision of the Supreme Court, even though it may not have the approval of the Judge of the High Court or lower Court where the Supreme Court decision is cited. Central Administrative Tribunal, too, is bound to follow the Supreme Court decisions.

4.2 ***Not to follow is 'contempt'***

A judgement of the High Court that refuses to follow the directions of the Supreme Court or seeks to revive a decision of the High Court which was set aside by the Supreme Court is a nullity. The Supreme Court may treat it as contempt even where its order was couched in the language of a request.

4 3 ***Remand by the Supreme Court***

Where, however, in a subsequent petition under Article 32, the Supreme Court directs the petitioner to go before the High Court and directs the High Court to 'reconsider' the matter, the High Court would not be fettered by its own previous judgement.

4.4 ***Lower Courts-not to seek clarification***

If a direction of the Supreme Court is clear, a party cannot approach the Court for clarification for assisting the High Court, since the same would tantamount to nullifying the Supreme Court order or notification.

4.5 ***Non-consideration of a particular argument-no ground to assail the decision***

The binding force of a Supreme Court decision cannot be assailed on the ground that it did not consider a particular argument provided the point to which the argument relates was actually decided therein.

5 SUPREME COURT-HOW FAR BOUND BY ITS OWN DECISIONS ?

The words 'all courts in' Article 141 do not include the Supreme Court. In overruling its earlier decision, the Supreme Court should remember that while the decisions of other Courts are binding only upon the litigants, a decision of the Supreme Court is something more: it is declaratory for the nation. Accordingly, the Supreme Court is free to depart from its earlier decision in certain cases.

5.1 ***Departure from earlier decisions-illustrations***

That the Supreme Court is free to depart from an earlier decision is evident from the following illustrative circumstances.

(a) If it is satisfied about any error in its decision and the baneful effect of such error on the general public interests.

(b) Where the earlier decision is rendered *per incuriam* (in ignorance of) a relevant constitutional or statutory provision or of some decision of its

own. [Lily Thomas v Union of India (2000) 6 SCC 224; AIR 2000 SC 1650]

(c) Where the Supreme Court is satisfied that an earlier judgement has deprived the petitioner of fundamental or other rights.

(d) Where social, industrial or legislative changes call for a wider outlook, or progressive interpretation.

(e) Where there has been no uniformity in previous decisions, the later Court would examine the principle in the light of the scheme of the Constitution and the materials placed before it.

(f) Where the Supreme Court itself cautions that the direction issued by it is not to be treated as a precedent in any other case.

(g) The doctrine of precedents does not apply to an order rejecting a Special Leave Petition.

5.2 ***No departure from earlier decisions-illustrations***

In the following illustrative circumstances, however, the Supreme Court was slow in departing from its earlier decision.

(a) Where the earlier decision was followed in a large number of cases.

(b) Where the earlier decision is a unanimous decision of a Bench of five Judges.

(c) Where the earlier decision is of the Constitution Bench, the later Court should treat it as final [unless the subject is of such fundamental importance to national life or the reasoning is so plainly erroneous in the light of later thought that it is wiser to be ultimately right rather than to be consistently wrong].

(d) A contrary decision or a larger Bench prevails over the decision of a smaller Bench [S H Rangappa v State of Karnataka (2002) 1 SCC 538]. A mere expression of disapproval by another Bench, however, does not overrule an earlier decision; it subsists until it has been expressly overruled by a larger Bench.

Where a question has been decided by a larger Bench, all subsequent decisions by smaller Benches must be construed so as not to contradict the decision of the larger Bench.

(e) Where the earlier decision represents a long-settled interpretation solely depending on the facts of a given case.

(f) Where the earlier decision is by a bench of equal number of judges. Thus, a Division Bench of two Judges cannot overturn the decision of another Bench of two Judges. If they are unable to agree, they should refer it to a larger Bench. ■

29-CA/Law/D-48/2003

New Delhi: Dated 07.01.2004

Notification

(Chartered Accountants)

No.29-CA/Law/-48/2003: In exercise of the powers conferred by sub-section (2) of Section 20 of The Chartered Accountants Act, 1949 read with Regulation 18 of the Chartered Accountants Regulations, 1988, it is hereby notified by the Council of the Institute of Chartered Accountants of India that the Hon'ble High Court of Gujarat has, in pursuance to Section 21(6)(c) of the said Act, in Chartered Accountants case No.1/1991, ordered on 14th February, 2003 that the name of Shri P.C.Parekh, FCA, "Purvalaya" Building, 14/15, Ramkrishna Nagar, Rajkot 360002 (M.No.2919) be removed from the Register of Members for a period of five years for having been found guilty of "other misconduct" under Section 21 read with Section 22 of the Chartered Accountants Act, 1949. Accordingly, it is hereby informed that the name of the said Shri P.C.Parekh shall stand removed from the Register of Members for a period of five years w.e.f. 1st February, 2004. During that period he shall not practise as a Chartered Accountant in terms of the said order of the Hon'ble High Court of Gujarat.

sd/-
(Dr. Ashok Haldia)
Secretary