**(2010) 04 P&H CK 0378**

**In the Punjab And Haryana At Chandigarh**

Alcatel South Asia Ltd. APPELLANT

Vs

State of Haryana and Others RESPONDENT

**Date of Decision :** 07-04-2010

**Acts Referred:**
Constitution of India, 1950 — Article 226

**Citation :** (2010) 31 VST 567

**Hon'ble Judges :** Alok Singh, J;A.K. Goel, J

**Bench :** Division Bench

## Judgement

Alok Singh, J.—By way of present writ petition invoking jurisdiction under Article 226 of the Constitution of India, the petitioner is assailing the orders passed by the Haryana Tax Tribunal dated 15.9.2005, 19.9.2005 and 18.4.2006.

2. Brief facts of the present case are that the petitioner-company has set up its unit at Gurgaon to manufacture digital switches equipment and systems in 1993 and the unit came into commercial production on 1.2.1994. The petitioner-company being eligible under the General Sales Tax Rules, 1975 (hereinafter referred to as the 1975 Rules) applied for issuance of eligibility certificate for claiming benefit of exemption from payment of sales tax. The eligibility certificate was issued to the petitioner -company for a period of seven years with effect from 1.2.1994 with an overall sales tax exemption of Rs. 46.89 crores. Thereafter, the petitioner made an additional capital investment and increased its manufacturing capacity. The petitioner again applied for exemption of the tax under the rules on the expanded capacity in October 1996. The High Level Screening Committee rejected the petitioner''s application vide order dated 29.12.1999. Feeling aggrieved by the rejection of its application, the petitioner filed an appeal before the Commissioner and Secretary, Department of Industries, which was accepted by the appellate authority vide order dated 30.10.2000 with the conditions inter-alia that the petitioner would avail all the benefits from the date of entitlement and submitting an undertaking to this effect. Pursuant to the order passed by the appellate authority, eligibility

certificate was issued to the limit of Rs. 91.43 crores for a period of seven years commencing from 17.4.2002. The sales tax authorities issued notice on 18.4.2003 asking the petitioner to segregate sales for the period October 1996 to January 2001. The petitioner challenged the notice by way of filing CWP No. 15951 of 2003 before this Court. However, the petition was dismissed vide order dated 13.10.2003 holding that the petition is not maintainable at the stage of show cause notice. The petitioner moved a representation dated 3.9.2003 asking the authorities to provide exemption from 7.10.1996 instead of 17.4.2002 on the expanded unit. The Director Industries, Haryana, rejected the representation dated 3.9.2003. No opportunity of hearing was granted to the petitioner. The petitioner preferred an appeal to the Haryana Tax Tribunal (hereinafter referred to as the Tribunal). Two member Bench of the Tribunal heard the appeal and accepted the same vide order dated 5.4.2004. The Tribunal has clearly held that the assessee should be allowed to change his option. It was further held that the appellate authority does not have any power to impose conditions that are not provided in Rule 28A of the 1975 Rules. A review petition was filed against the order of the tribunal dated 5.4.2004 mainly on the ground that no appeal is provided against the order of the Director and the appeal is maintainable only against the order of the High Level Committee refusing to grant exemption certificate. Two members Bench of the Tribunal differed in their opinion on the review application. One of the members i.e. Shri B.S. Suhag rejected the review application filed by the Deputy Excise and Taxation Commissioner as being incompetent. The Chairman of the Tribunal being other member of the Bench hearing the review petition, held that the Deputy Excise and Taxation Commissioner is competent to file review application. Since there was difference of opinion between the two members Bench of the Tribunal, the chairman ordered that the matter be put up before the full member Bench Tribunal on the issue of maintainability. After reference, the matter ought to have been heard by all the three members of the Tribunal, but the same was heard only by the third member sitting single on 7.7.2005. Before the pronouncement of the order dated 7.7.2005, one of the members of the Tribunal Shri B.S. Suhag had already retired and hence, order impugned cannot be said having been passed by the full member Bench Tribunal.

3. The respondents refuted the contents of the writ petition and said that the order was in fact passed by the full member Bench and before retirement everything was over and only judgement was pronounced after the retirement.

4. We have heard learned Counsel for the parties and perused the record.

5. At the beginning, Mr. Ashok Aggarwal, learned senior counsel appearing for the petitioner stated that the questions raised by the petitioner in the writ petition pertaining to the competence/procedure to be adopted by the full member Bench Tribunal need not be examined in the present petition and the matter be referred to the High Level Committee to decide representation moved by the petitioner, which was wrongly rejected vide order dated 30.12.2003. He

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further submitted that in fact the Director ought not to have taken decision on the representation since he is also a Member Secretary of the High Level Committee and the representation should have been placed before the High Level Committee to take the decision on the point as to whether commencement period of the exemption requires modification or not. Mr. Ashwani Chopra, learned senior counsel appearing for the respondents stated that the matter does not require reconsideration by the High Level Committee in view of the fact that the petitioner has already submitted his undertaking in compliance with the order of the competent authority about the commencement of the exemption period and the petitioner cannot change his undertaking by way of representation.

6. Undisputedly, the Director Industries is the Member Secretary of the High Level Committee. Under Rule 28-A of the Haryana General Sales Tax Rules, 1975, exemption certificate and period of exemption is to be determined by the High Level Committee. If it is so, any modification in the exemption certificate either about exemption limit or about the extension of the period or about the change of exemption period, can only be taken by the High Level Committee. Rule 28-A of the Haryana General Sales Tax Rules, 1975 is being reproduced hereunder:

Rule 28-A of the 1975 Rules reads as under: Class of Industries, period and other conditions for exemption/deferment from payment of tax (Sections 13B and 25A):-(1) The industries covered under this rule shall be entitled to any deferment or exemption from payment of tax under ay other provisions of these rules.

(2) xx xx xx xx

5(a) Every Eligible Industrial Unit which is desirous of availing benefit under this rule shall make an application in form S.T.70 in triplicate alongwith attested copies of the documents mentioned therein to the General Manager District Industries Centre within 90 days of the date of its going into commercial production or the date of coming into force of this rule whichever is later. No application shall be entertained if not preferred within time. An application with incomplete or incorrect particulars including the documents required to be attached therewith shall be deemed as having not been made if the applicant fails to complete it on an opportunity afforded to him this behalf.

(b) Applications from small scale units will be considered by the lower Level Screening Committee and those from Medium/Large scale units by the higher Level Screening Committee.

(c) The General Manager, District Industries Centre shall immediately forwarded one copy of the application and documents on receipt to the Deputy Excise and Taxation Commissioner incharge of the District who will send his comments within a period of 21 days. In case of medium/Large scale industry, a copy of the comments will also be sent by him to the Commissioner.

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(d) The General Manager, District Industries Centre will within 30 days of receipt of the application from the small scale industry, place the proposal before the Lower Level Screening Committee with his report and recommendations alongwith comments, if any of the Deputy Excise and Taxation Commissioner concerned for its decision.

(e) The General Manager, District Industries Centre will within 30 days of receipt of the application from the medium/large scale industry, forward his report and recommendations alongwith the comments if any, of the Deputy Excise and Taxation Commissioner to the Additional Director of Industries who will place his proposal before the Higher Level Screening Committee within a further period of 15 days for its decision.

(f) An appeal from the original decision of the lower Level Screening Committee shall lie to the Higher Level Screening Committee, if preferred within 30 days of communication of the decision. The decision of the Higher Level Screening Committee in such appeal shall be final.

(g) An appeal from the original decision of the Higher Level Screening Committee shall lie to the Secretary, Industries, if preferred within 30 days of communication of the decision. The decision of the Secretary Industries shall be final.

7. From the perusal of the aforesaid rule, we have no doubt in our mind to hold that the Director Industries has absolutely no jurisdiction to take decision on the representation in the matter of exemption certificate. The matter of modification of the period of commencement of the exemption certificate can only be decided by the High Level Committee. The Director ought to have placed the representation before the High Level Committee. Mr. Chopra could not dispute this. However, he confined his argument that the representation does not require any reconsideration in view of the undertaking submitted by the petitioner in compliance with the appellate authorities order dated 30.10.2000.

8. What would be the effect of the undertaking submitted by the petitioner and whether exemption period or date of commencement requires any change or modification must be considered by the High Level Committee.

9. In view of the above, we think that the question raised in the writ petition about the constitution of the Full Bench Tribunal or the procedure to be adopted while hearing the reference by the full Bench Tribunal need not be examined in the peculiar facts and circumstances of the case, which we keep open to be decided in an appropriate case. However, in view of the above, we find that the Director Industries, Haryana had no jurisdiction to take decision and hence, the order passed by the Director Industries, Haryana, communicated vide 30.10.2000 is quashed. The Director Industries, Haryana, is directed to place the representation before the High Level Committee and the Committee after hearing the petitioner, shall pass an appropriate order thereon, in accordance with law.

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10. Writ petition stands disposed of in the aforesaid terms.

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