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**(2005) 01 P&H CK 0168**

**In the Punjab And Haryana At Chandigarh**

**Case No :** General Sales Tax Reference No. 3 of 2004

Casio India Co. Private Limited

APPELLANT

Vs

State of Haryana

RESPONDENT

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**Date of Decision :** 06-01-2005

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 6(1), 6(1A), 6(2), 8(2A), 8(4)  
Haryana General Sales Tax Act, 1973 — Section 13(1), 13B, 25A, 41, 42(1)  
Haryana General Sales Tax Rules, 1975 — Rule 28, 28A, 28A(2), 28A(4), 28A(6)

**Citation :** (2006) 144 STC 4

**Hon'ble Judges :** Jasbir Singh, J;G.S. Singhvi, J

**Bench :** Division Bench

**Advocate :** Rajesh Bindal, for the Appellant; Jaswant Singh, D.A.G., for the Respondent

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**Judgement**

G.S. Singhvi, J.—On an application filed by the petitioner u/s 42(1) of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the State Act"), Sales Tax Tribunal, Haryana (for short, "the Tribunal") has referred the following questions of law for the opinion of this Court :

(i) Whether the notification dated September 4, 1995 issued u/s 8(5) of the Central Sales Tax Act, 1956, is relatable to the exemption of goods or the person selling it?

(ii) Whether in view of the notification dated September 4, 1995 issued u/s 8(5) of the Central Sales Tax Act, 1956 and Rule 28A of the Haryana General Sales Tax Rules, 1975, the inter-State sales of the goods manufactured by an "exempted unit", even by any other dealer, is exempted from the levy of Central sales tax ?

2. For deciding the aforementioned questions, we may briefly notice the facts. The petitioner is engaged in the manufacture and sale of radio pagers. It was earlier known as M/s. Casio Bharti Mobile Communications Ltd. During the assessment year 1997-1998, the petitioner filed monthly returns, the summary

of which reads as under:

Gross turnover : 16,36,41,107.00 Inter-State Sales : 16,27,18,200.06 Exports 3,12,318.00 Stock transfers : 6,10,589.44 Tax deposited HGST 29,658.00 Tax deposited CST 40,693.00

3. After scrutiny, Excise and Taxation Officer-cum-Assessing Authority, Gurgaon (East) (hereinafter described as "the Assessing Authority") issued notice dated July 13, 1998 in form ST-25 and called upon the petitioner to explain as to how it was entitled to exemption in respect of the goods purchased from M/s. Bharti Telecom Ltd. In its reply, the petitioner claimed that the inter-State sales and stock transfers of the goods purchased from M/s. Bharti Telecom Ltd., which had been granted exemption under Rule 28A of the Haryana General Sales Tax Rules, 1975 (for short, "the Rules") were not liable to be taxed in view of exemption Notification No. S.O. 89/CA.74/56/S.8/95 dated September 4, 1995 issued by the State Government u/s 8(5) of the Central Sales Tax Act, 1956 (for short, "the Central Act"). After considering its reply, the Assessing Authority vide order dated October 5, 2001 created liability of Rs. 93,236 against the petitioner. The Assessing Authority also created demand of Rs. 11,649 under the State Act. The appeals filed by the petitioner against the order of the Assessing Authority were dismissed by Joint Excise and Taxation Commissioner (Appeals), Rohtak, vide his order dated May 2, 2002, the relevant extract of which is reproduced below :

Regarding the inter-State sales of the traded goods (i.e., purchased from M/s. Bharti Telecom Ltd.), the counsel has placed reliance on the provisions of Sub-rule (4)(c) of Rule 28A, Notification No. S.O. 89/CA.74/56/S.8/95 dated September 4, 1995 and the judgment of the honourable Tribunal cited as 15 PHT 546 Hy. S.T.T. As discussed in the foregoing para that even the branch transfers and consignment sales have been restricted to the extent of within the State of Haryana, then by no stretch of imagination sales under Sub-rule (4)(c) can be construed as including inter-State sales at the successive stages. Furthermore, the abovesaid notification dated September 4, 1995 itself makes it clear that... on the sales of goods manufactured in the State of Haryana, by any dealer holding a valid exemption certificate... during the period of exemption....

The provisions of this notification entitle only the dealer holding exemption certificate for exemption on sale of their goods in the course of inter-State trade and commerce and not other traders. As far as the facts of judgment cited by the honourable Tribunal are concerned that also relate to the manufacturer himself enjoying the benefits of exemption and not of traded goods. This view has been recently upheld by the honourable Tribunal in S.T.A. No. 699 of 2001-02 in the case of M/s. Sital Sales Corporation, Panipat v. State of Haryana by observing that "The dealer being a trader is not entitled for any concession on the sales of exempted goods in the course of inter-State trade and commerce".

4. Further appeal filed by the petitioner was dismissed by the Tribunal by a rather brief order dated September 9, 2002 by making reference to a detailed

order passed in S.T.A. No. 146 of 1997-98 filed by M/s. Siemens Telecom Ltd., Gurgaon. The Tribunal held that the petitioner is not entitled to exemption under notification dated September 4, 1995.

5. Shri Rajesh Bindal, learned counsel for the petitioner, referred to the provisions of Rule 28A(2)(n), 28A(4), (6) and (7) of the Haryana General Sales Tax Rules, 1975, Section 8(2A), (4) and (5) of the Central Sales Tax Act and notification dated September 4, 1995 and argued that the petitioner is not liable to pay tax on the inter-State sale of goods which were purchased from an exempted unit, namely, M/s. Bharti Telecom Limited. Shri Bindal submitted that notification dated September 4, 1995 issued by the State Government provides for grant of exemption on the sale of goods manufactured in the State of Haryana by any dealer holding valid exemption certificate under Rule 28 of the Rules and not to the dealer and, therefore, the goods sold by the petitioner in the course of inter-State trade were not liable to be taxed. In support of his arguments, Shri Bindal relied on the judgments of the Supreme Court and different High Courts? International Cotton Corpn. (P) Ltd. Ors. Vs. Commercial Tax Officer, Hubli, and Others, , Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others, , M/s. Khadi and Village Soap Industries Association and another Vs. State of Haryana and others, , State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc., and Commissioner of Sales Tax Vs. Industrial Coal Enterprises, . Learned counsel further argued that the orders passed by the appellate authority and the Tribunal in the petitioner's case are liable to be ignored because the department had not challenged the order passed by the Tribunal in S.T.A. No. 641 of 1997-98 (Assessing Authority, Hisar v. Haryana Cotton and General Mills, Adampur) and felt satisfied by filing review application u/s 41 of the State Act which was dismissed on September 17, 2001.

6. Shri Jaswant Singh, learned Senior Deputy Advocate-General, Haryana, argued that notification dated September 4, 1995 provides for grant of exemption only on the sale of goods manufactured in the State by a dealer holding valid exemption certificate under Rule 28 of the Rules subject to the condition that such dealer had not charged tax under the Central Act on the sale of goods manufactured by it and not to the sale of goods by other dealers in the course of inter-State trade. He submitted that the petitioner has not been granted exemption certificate under Rule 28A of the Rules and as such, the goods sold by it in the course of inter-State trade are not exempted from tax under the Central Act merely because the same had been purchased from M/s. Bharti Telecom Ltd., which possesses a valid exemption certificate. He relied on the judgment of the Supreme Court in State Level Committee and another Vs. M/s. Morgardshammar India Ltd., and argued that the notification issued u/s 8(5) of the Central Act should be strictly construed so as to confine the benefit of exemption only to those who fulfil the conditions specified therein and there is no warrant to stretch its language to extend the benefit of exemption to the dealers, like the petitioner.

7. We have given serious thought to the respective arguments. For proper appreciation of the controversy arising in this reference, it will be useful to notice the provisions of Section 8(2A) and (5) of the Central Sales Tax Act, Rule 28A(2)(n), (4)(c) of the HGST Rules, 1975 and notification dated September 4, 1995. The same read as under :

Section 8(2A) and (5) of the Central Act:

8. Rate of tax on sales in the course of inter-State trade or commerce.-(1)...

(2A) Notwithstanding anything contained in Sub-section (1A) of Section 6 or Sub-section (1) or Clause (b) of Sub-section (2) of this section, the tax payable under this Act by a dealer on his turnover in so far as the turnover or any part thereof relates to the sale of any goods, the sale or, as the case may be, the purchase of which is, under the sales tax law of the appropriate State, exempt from tax generally or subject to tax generally at a rate which is lower than four per cent (whether called a tax or fee or by any other name), shall be nil or, as the case may be, shall be calculated at the lower rate.

(5) Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by notification in the Official Gazette, and subject to such conditions as may be specified therein, direct?

(a) that no tax under this Act shall be payable by any dealer having his place of business in the State in respect of the sales by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods as may be specified in the notification, or that the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification ;

(b) that in respect of all sales of goods or sales of such classes of goods as may be specified in the notification, which are made in the course of inter-State trade or commerce, by any dealer having his place of business in the State or by any class of such dealers as may be specified in the notification to any person or to such class of persons as may be specified in the notification, no tax under this Act shall be payable or the tax on such sales shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification.

Rule 28A(2)(n) and (4)(c) of the Rules :

28A. Class of industries, period and other conditions for exemption/deferment from payment of tax (Sections 13-B and 25-A).- (1)...

(2) For the purpose of this Chapter, unless the context otherwise requires,-

(a) to (m)...

(n) "notional sales tax liability" means-

(i) amount of tax payable on the sales of finished products of the eligible industrial unit under the local sales tax law but for an exemption computed at the maximum rates specified under the local sales tax law as applicable from time to time ; and Explanation.?The sales made on consignment basis within the State of Haryana or branch transfer within the State of Haryana shall also be deemed to be sales made within the State and liable to tax ;

(ii) amount of tax payable under the Central Sales Tax Act, 1956, on the sales of finished products of the eligible industrial unit made in the course of inter-State trade or commerce computed at the rate of tax applicable to such sales as if these were made against certificate in form C on the basis that the sales are eligible to tax under the said Act.

Explanation.?The branch transfers or consignment sales outside the State of Haryana shall be deemed to be sale in the course of inter-State trade or commerce.

Note.?The expression and terms, if any appearing in this rule not defined above shall unless the context otherwise requires carry the same meaning as assigned to them under the Act and the Rules made thereunder.

(4)(a) and (b) ...

(c) The goods manufactured by an eligible industrial unit availing exemption under this rule shall be exempt from the levy of tax at all the successive stage(s) of sale or purchase subject to the condition that the dealer effecting the successive purchase or sale furnishes to the Assessing Authority a certificate in form S.T. 14-A to be obtained from the Assessing Authority against payment of such sum as may be fixed by the State Government from time to time, duly filled in and signed by the registered dealer by whom such goods were purchased.

Notification dated September 4, 1995

No. S.O. 89/CA.74/56/S.8/95 dated the 4th September, 1995.

In exercise of the powers conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956, the Governor of Haryana being satisfied that it is necessary so to do in the public interest, hereby directs that no tax under the said Act shall be payable with effect from April 1, 1988, on the sale of goods manufactured in the State of Haryana, by any dealer holding a valid exemption certificate under Rule 28A of the Haryana General Sales Tax Rules, 1975 during the period of exemption ; provided that no tax under the said Act has been charged by such dealer on the sale of goods manufactured by him.

8. A reading of the provisions reproduced above shows that the expression "notional sales tax liability" takes within its fold not only the amount of tax payable on the sales of finished goods of the eligible industrial unit under the State Act, but also the amount of tax payable under the Central Act on the sales of finished products of the eligible industrial unit made in the course of inter-

State trade or commerce and branch transfers or consignment sales outside the State of Haryana [Rule 28A(2)(n)]. Clause (c) of Sub-rule (4) of Rule 28A extends the scope of exemption to the goods manufactured by an eligible industrial unit availing exemption under Rule 28A at all successive stage(s) of sale or purchase subject to the condition that the dealer effecting successive purchase or sale furnishes to the Assessing Authority a certificate in form S.T. 14-A which is required to be obtained from the Assessing Authority duly filled in and signed by the registered dealer to whom such goods were sold. Sub-rule (6) of Rule 28A lays down the mechanism for grant of exemption/entitlement certificate. Sub-rule (7) envisages renewal of exemption certificate and lays down the procedure for grant of renewal. Section 8(2A) of the Central Act contains a non obstante clause. It lays down that notwithstanding anything contained in Section 6(1A) or Sub-section (1) or Clause (b) of Sub-section (2) of 8, the tax payable under the Central Act by a dealer on his turnover in so far as the turnover or a part thereof relates to the sale of any goods, the sale or purchase of which is exempted from tax under the State Act or is subjected to tax at a rate lower than 4 per cent shall be nil or shall be calculated at the lower rate. Sub-section (5) of Section 8 also begins with a non obstante clause. It empowers the State Government to grant exemption from payment of tax or levy of tax at a lower rate on the dealer having his place of business in respect of the sales made by him in the course of inter-State trade or commerce. It also empowers the State Government to direct that no tax shall be payable under the Central Act or tax shall be calculated at lower rates in respect of all sales of goods or classes of goods as may be specified in the notification which are made in the course of inter-State trade or commerce by any dealer having his place of business in the State or class of dealers specified in the notification. Notification dated September 4, 1995 declares that no tax shall be payable under the Central Act, with effect from April 1, 1988 on the sale of goods manufactured in the State of Haryana by any dealer holding a valid exemption certificate under Rule 28A of the Rules, provided that such dealer has not charged tax under the Central Act on the sale of goods manufactured by him.

9. In our opinion, even though, notification dated September 4, 1995 is not happily worded, on a plain construction thereof, we are inclined to approve the view taken by the Tribunal in the case of Siemens Telecom Ltd., Gurgaon, which has been followed in the case of the petitioner that the same does not exempt the goods sold in the course of inter-State trade by dealers other than those who hold valid exemption certificate granted under Rule 28A of the Rules. If the State Government wanted to extend the benefit of exemption from payment of tax under the Central Act to the sale of goods effected by a dealer in the course of inter-State trade irrespective of the fact that such dealer does not hold exemption certificate under Rule 28A of the Rules, then it would have incorporated the language of Rule 28A(4)(c) in the notification and would not have put the rider that such dealer should not have charged tax under the Central Act on the sale of goods manufactured by it.

10. We are further of the view that successive sales of goods manufactured by a dealer holding valid exemption certificate are exempted from payment of sales tax only so long as they are intra-State sales. If the sale of goods by a dealer not holding exemption certificate under Rule 28A is in the course of inter-State trade, then the benefit of exemption envisaged under notification dated September 4, 1995 is not available to such dealer. To put it differently, successive stages of sales which are exempted from payment of tax under the State Act are covered by Rule 28A(4)(c), but notification dated September 4, 1995 is applicable only to sale of goods manufactured by the exempted unit. As a corollary to this, it must be held that the benefit of notification dated September 4, 1995 cannot be extended to a dealer, like the petitioner.

11. We may now advert to the judgments, on which reliance has been placed by the learned counsel for the petitioner. In *International Cotton Corpn. (P) Ltd. Ors. Vs. Commercial Tax Officer, Hubli, and Others*, their Lordships of the Supreme Court interpreted sections 6(1A) and 8(2-A) of the Central Act and laid down the following proposition of law :

When Sub-section (2A) of Section 8 uses the words "the sale or, as the case may be, the purchase", it is merely referring to the fact that State Sales Tax Acts make either the sale or purchase taxable and not that where the sale is taxable the purchase is exempt from tax and where the purchase is taxable the sale is exempt from tax and, therefore, where one of them is exempt from tax in respect of an intra-State sale the inter-State sale is completely exempt from tax. Reading Section 6(1A) and Section 8(2A) together along with the explanation the conclusion deducible is as follows : Where the intra-State sales of certain goods are liable to tax, even though only at one point, whether of purchase or of sale, a subsequent inter-State sale of the same commodity is liable to tax, but where that commodity is not liable to tax at all if it were an intra-State sale the inter-State sale of that commodity is also exempt from tax. Where an intra-State sale of a particular commodity is taxable at a lower rate than 3 per cent then the tax on the inter-State sale of that commodity will be at that lower rate. An inter-State sale of any commodity is not exempt from tax if as an intra-State sale the purchase or sale of that commodity is exempt only in specified circumstances or under specified conditions or the tax is leviable on the sale or purchase at specified stages.

12. In *Pine Chemicals Ltd. and Others Vs. Assessing Authority and Others*, their Lordships of the Supreme Court interpreted Section 8(2-A) of the Central Act and held as under :

The benefit of the exemption under the Government orders is also available in respect of turnover on inter-State sales in view of Section 8(2-A) of the Central Sales Tax Act. The facts which the dealer has to prove to get the benefit of the Government orders are intended only to identify the dealer and the goods in respect of which the exemption is sought and they are not conditions or specifications of circumstances relating to the turnover sought to be exempted

from payment of tax within the meaning of those provisions. The specified circumstances and the specified conditions referred to in the explanation should relate to the transaction of sale of the commodity and not identification of the dealer or the commodity in respect of which the exemption is claimed. These conditions relating to identity of the goods and the dealer are always there in every exemption and that cannot be put as a condition of sale. The specified circumstances and the specified conditions referred to in the explanation should be with reference to the local turnover of the same dealer who claims exemption u/s 8(2-A) of the Central Sales Tax Act.

13. In *M/s. Khadi and Village Soap Industries Association and another Vs. State of Haryana and others*, the Supreme Court rejected challenge to the validity of notification dated December 30, 1987 issued u/s 13(1) of the State Act vide which full exemption was granted to Khadi Ashram, Panipat, and its centralised units functioning within the State of Haryana, but restricted the exemption to other co-operative societies and persons to their turnover not exceeding Rs.5 lakhs in one year.

14. In *State of Rajasthan and Another Vs. Sarvotam Vegetables Products etc.*, their Lordships of the Supreme Court held that unless the conditions enumerated in Section 8(4) of the Central Act are satisfied, the benefit of reduced rate of tax cannot be availed by the assessee. The principle of law laid down in that case reads as under:

Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956, which empowers the State Government to grant exemption or reduction in the rate of tax, is an integral part of the section and the Act as such. That power has to be exercised in the public interest and its exercise is to be guided by and be consistent with the provisions of the Act. More important, the levy of Central sales tax and the prescription of rate is not by the notification contemplated by Section 8(5) but by the Act itself. One cannot conceive of a notification of the State Government u/s 8(5) being independent of or apart from the section. Neither Section 8(5) nor a notification under it is self-contained or operates de hors the other provisions of the Act and the Rules. One must first satisfy the condition in Section 8(4) to become eligible for the concessional rate in Section 8(1). It is only thereafter that he can claim the benefit of the notification u/s 8 for which purpose he has to satisfy the conditions prescribed in the notification. Even for sales of goods, the rate of tax for which are governed by a notification u/s 8(5) granting exemption or prescribing a lower rate, there is an obligation to produce the C form. Action can be taken in relation to those sales against the dealer for producing invalid or spurious C forms.

15. In *Commissioner of Sales Tax Vs. Industrial Coal Enterprises*, the Supreme Court held that a provision granting incentive for promoting economic growth and development in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive manner so as to advance the objective of the provision.

16. In our opinion, the proposition of law laid down in none of the aforementioned judgments has any bearing on the interpretation of Rule 28A(2) (n) and (4)(c) of the Rules and notification dated September 4, 1995. Rather, we are inclined to apply the ratio of the judgment in State Level Committee and another Vs. M/s. Morgardshammar India Ltd., in which the Supreme Court held that while interpreting an exemption clause or an exception should be strictly construed because the same has the tendency to increase the burden on the other unexempted class of tax-payers. The same view was expressed in Mangalore Chemicals and Fertilisers Ltd. Vs. Deputy Commissioner of Commercial Taxes and others, and Novopan India Ltd. v. Collector of Central Excise and Customs, Hyderabad (1994) Suppl. 3 SCC 606.

17. The argument of Shri Rajesh Bindal that the Tribunal was bound by the order passed in the case of Haryana Cotton and General Mills, Adampur appears attractive but cannot stand closer scrutiny. A perusal of that order shows that the learned Member of the Tribunal had upheld the claim of the assessee for grant of exemption in terms of notification dated September 4, 1995 by making the following observations :

A unit is exempted from tax at all the successive stages of sale or purchase. Such successive sale or purchase can be either a local or inter-State. In this case, it is not denied that the goods sold by respondent-dealer were manufactured in Haryana by an exempted unit. Notification dated September 4, 1995 referred to above clearly provides that no tax under the C.S.T. Act, 1956 shall be payable after April 1, 1988 on sale of goods manufactured in the State by any dealer holding exemption certificate. Clause (c) of Sub-rule (4) of Rule 28A makes the matter more clear that goods manufactured by an exempted unit are not liable to tax at all the successive stages of sale irrespective of the fact that the sale is local sale or inter-State sale. This very view has been held by their Lordships in the cases referred to above by the counsel for the respondent. In view of these clear facts on record and the provisions contained in the Haryana General Sales Tax Act/Rules supported by the judgments referred to above the respondent-dealer was fully entitled to the deductions on inter-State sale of cotton and as such revisional authority was fully justified to allow such deductions.

18. In our opinion, the learned Member of the Tribunal had gravely erred in deciding the matter by presuming that once an exemption is granted under Rule 28A of the Rules, the goods manufactured by the unit holding exemption certificate are automatically exempted from levy of tax under the Central Act. The language of Rule 28A(4)(c) and notification dated September 4, 1995 does not admit of such interpretation. Therefore, by taking a contrary view in the case of Siemens Telecom Ltd., Gurgaon, the other Member of the Tribunal did not commit any jurisdictional error and the orders passed by him cannot be ignored.

19. In the result, the questions referred by the Tribunal are answered against the petitioner and in favour of the department.