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**(2007) 07 P&H CK 0052**  
**In the Punjab And Haryana At Chandigarh**

State of Haryana

APPELLANT

Vs

Samtel India Ltd. and Another

RESPONDENT

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**Date of Decision :** 09-07-2007

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227

**Citation :** (2008) 13 CTR 276

**Hon'ble Judges :** M.M. Kumar, J;Ajay Kumar Mittal, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

M.M. Kumar, J.—The State of Haryana through its Excise and Taxation Commissioner has approached this Court by filing the instant writ petition under Articles 226/227 of the Constitution for quashing order dated November 30, 2005 passed by the Haryana Tax Tribunal, Chandigarh (P10) in Section T. A. No. 240 of 2005-06. The Tribunal has held that the industrial unit, respondent No. 1, should have been allowed the addition of item, i.e., colour T. V. monitor within the amount of exemption limit and the period stipulated in the eligibility certificate.

2. Brief facts of the case are that M/s. Samtel India Limited, Faridabad, respondent No. 1, which is an industrial company and engaged in manufacturing of monochrome monitors along with black and white T.V. sets applied for tax benefit for its unit under Rule 28A of the Haryana General Sales Tax Rules, 1975. In that regard an application in form ST 70 dated May 12, 1995 (annexure PI) was submitted to the Higher Level Screening Committee (for brevity, "HLSC") which vide its decision taken on the application allowed tax benefits by way of sales tax exemption and ordered for the issuance of eligibility certificate (annexure P2). Some corrections were carried out by issuing corrigendum dated May 30, 1996 (annexure P3) rectifying mistakes. Respondent No. 1 carried diversification of existing unit to manufacture colour monitor and submitted another application on March 12, 1996, which was considered by the HLSC and

eligibility certificate was issued allowing the tax benefit by way of exemption from payment of tax to the extent of Rs. 122.85 lakhs from December 15, 1995 to December 14, 2001 (annexure P5). On December 1, 1998, respondent No. 1 submitted an application (annexure P6) requesting for insertion of colour monitors in the eligibility certificate dated May 15, 1996 (annexure P2) which was issued to the unit that was set up to manufacture black and white T.V. and monochrome monitors. The HLSC after affording an opportunity of hearing to respondent No. 1 rejected the application vide its order dated October 11, 1999 (annexure P6) on the premises that there was no provision under Rule 28A of the Rules authorising the HLSC to make correction in the eligibility certificate for manufacturing of black and white T.V. and monochrome monitors. A copy of the decision was conveyed to respondent No. 1 on November 9, 1999 (annexure P7). Order dated November 9, 1999 was challenged before the Commissioner and Secretary, Industries, who dismissed the same on July 28, 2000 which led to the filing of Civil Writ Petition No. 1388 of 2002. A Division Bench of this Court vide its order dated October 3, 2002 disposed of the writ petition by setting aside order dated July 28, 2000 holding that the Commissioner and Secretary, Industries, did not afford an opportunity of hearing to the petitioner while disposing of its appeal. It was further found that on three occasions, the representatives of respondent No. 1 were not present when no proceedings could take place and on July 4, 2000 its counsel had made personal request for adjournment.

3. In this view of the matter, the writ petition was allowed and the order dated July 28, 2000 (annexure P7) was set aside and accordingly, respondent No. 1 appeared before the Commissioner, Industries. The appeal was allowed vide order dated December 2, 2002 by holding as under:

In this particular case, the appellants switched over from monochrome monitors, B & W monitors to colour T.V. monitors. The question now arises whether the sales tax benefit is extendable to an improved item subsequently produced without major changes in fixed capital investment and technology. I find that the rules are silent on the issue. In such a circumstance one has to look at the intention of the Legislature express or implied. It is my considered opinion that the entire scheme of the Act/Rules is device to give benefit of exemption/deferment of payment of sales tax in order to promote industrial activity for overall industrial development and therefore one should take a liberal interpretation and therefore answer to the above question should be in the affirmative. Keeping this in view, I accept the appeal and order that benefit will be available to the appellant on the item colour T.V. monitors also within the amount and period stipulated in the eligibility certificate.

4. The State of Haryana-petitioner challenged the aforementioned order in C.W.P. No. 6476 of 2003. This Court on January 24, 2005 (annexure P8) quashed the order passed by the Commissioner, Industries with a direction that the appeal filed by respondent No. 1 against the decision of HLSC (annexure P7) be decided

afresh.

The appeal, at this stage, was ordered to be decided by the Haryana Tax Tribunal on account of amendment made in the provisions. Accordingly a direction was issued by this Court that the Tribunal would decide the appeal. The Haryana Tax Tribunal took up the appeal for deciding the same afresh. The Tribunal vide impugned order dated November 30, 2005 (annexure P10) allowed the appeal and set aside the order passed by HLSC declining the application of respondent No. 1. The operative part of the order passed by the Tribunal shows that it has placed reliance on a Division Bench judgment of this Court in *State of Haryana v. Bharti Teletech Limited*, Gurgaon C.W.P. No. 11884 of 2003, decided on July 31, 2003]. A Division Bench of this Court while interpreting the expression "expansion/diversification of industrial unit" as defined in Sub-rule (2)(d) of Rule 28A of the Rules had held as under:

The expression "expansion/diversification of industrial unit" as defined in Sub-rule (2)(d) of Rule 28A means a capacity set up or installed during the operative period which creates additional productions/manufacturing facilities for manufacture of the same product/products as of the existing unit (expansion) or different products (diversification) at the same or new location and (i) in which the additional fixed capital investment made during the operative period exceeds 25 per cent of the fixed capital investment of the existing unit, and (ii) which results into increase in annual production by 25 per cent of the installed capacity of the existing unit in case of expansion. Respondent No. 1 did not indicate expansion of the existing unit or diversification by making additional fixed capital investment during the operative period. Therefore, its case did not fall within the meaning of the expression "expansion/diversification of the industrial unit" and the HLSC committed a serious illegality by declining its prayer for inclusion of additional items in the eligibility certificate.

5. In the present case also when we asked the learned State Counsel as to whether the eligibility certificate granted to respondent No. 1 as amended by the competent authority in pursuance of the direction issued by the Tribunal, it was conceded that the order of the Tribunal has been implemented. Similar position prevailed before the Division Bench which can be ascertained by reading para (b) of the order which is as under:

During the course of hearing, the learned Senior Deputy Advocate-General conceded that the impugned order has already been implemented and the eligibility certificate granted to respondent No. 1 was amended by the competent authority in pursuance of the direction given by respondent No. 2. He further conceded that by this time, respondent No. 1 must have availed the benefit of sales tax exemption on the additional products. This being the position, we do not find any justification to entertain the writ petition filed at this belated stage; and...

6. We asked the learned State counsel as to what is the distinction between the

order passed by the Division Bench on July 31, 2003 in Bharti Teletech Limited's case C.W.P. No. 11884 of 2003 and the present petition. She has submitted that there the petition was filed against the order passed on March 15, 1999 in the year 2003 and it was not entertained beyond a period of three years whereas in the present case, the order passed by the Tribunal is dated November 30, 2005 and the writ petition has been filed on July 4, 2007. It is true that the instant petition has been filed within a period of one year and nine months and it may not be hit by the period of limitation of three years as has been made applicable by the judgment of the honourable Supreme Court in the case State of Madhya Pradesh Vs. Bhailal Bhai and Others, yet we find that there is no explanation for filing the petition after such an unusual delay. Even on merits, the interpretation given by the Division Bench in Bharti Teletech limited's case C.W.P. No. 11884 of 2003, Sub-rule (2)(d) of Rule 28A could not be successfully assailed as respondent No. 1, as a matter of fact did not communicate expansion of the existing unit and diversification of the same by making fixed capital investment during the operative period. As was the case of Bharti Teletech Limited's case C.W.P. No. 11884 of 2003 even in the present case it has to be held that it did not fall within the meaning of expression "expansion/diversification of industrial unit", therefore, we are of the considered opinion that the Tribunal has taken correct view by disagreeing with the opinion expressed by HLSC. Therefore, the writ petition is liable to be dismissed for the reasons aforementioned.

The writ petition fails and the same is dismissed.