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**(2010) 04 P&H CK 0010**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : GSTR No. 13 of 2006**

State of Haryana

APPELLANT

Vs

Shree Cement Ltd.

RESPONDENT

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**Date of Decision :** 21-04-2010

**Acts Referred:**

**Citation :** (2011) 39 VST 464

**Hon'ble Judges :** Mehinder Singh Sullar, J; Ashutosh Mohunta, J

**Bench :** Division Bench

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## Judgement

Ashutosh Mohunta, J.—The Revenue has filed an application before the Tribunal for referring the case to the High Court. The matter has been referred by the Haryana Tax Tribunal, Chandigarh (for short, "the Tribunal") vide its order dated January 18, 2006 wherein the following question of law has been raised :

(i) Whether, on the facts and circumstances of the case, the Haryana Tax Tribunal was justified in holding that sale of gunny bags should have been taxed at the rate of four per cent instead of 12 per cent ?

(ii) Whether, on the facts and in the circumstances of the case, the Tribunal was justified in ignoring the clear observations of the Deputy Excise and Taxation Commissioner-cum-Revisonal Authority, Gurgaon that the transaction effected by the respondent was composite transaction involving sale of cement (powder) in bags ?

2. At the outset, counsel for the respondent-assessee has submitted that the Tribunal while dealing with the case of the same assessee for the assessment orders 1998-99 and 1999-2000 has held that the packing material would be taxable at its own rate and not at the rate on the basis of the contents therein. The learned counsel submits that these orders have not been assailed by the Revenue either by filing an appeal or revision and in fact have been accepted by the Department and hence they are estopped from assailing the same question for the earlier years. It is pertinent to mention here that assessment in the

present case pertains to the years 1995-96. Counsel for the assessee has placed reliance on the judgement of the Division Bench in GSTR No.69 of 1997 decided on February 3, 2009, Hyderabad Industries Ltd. Vs. State of Haryana, , wherein it has been held that once an issue has been accepted by the Revenue for the subsequent years then it would be applicable for the earlier years. Accordingly, the question of law raised by the assessee was answered in favour of the assessee and against the Revenue.

3. In the present case, as the Revenue has not assailed the decision of the Tribunal for the years 1998-99 and 1999-2000, between the same assessee, therefore, they cannot challenge the same question for the year 1995-96. The present case is squarely covered by the decision in Hyderabad Industries Ltd. Vs. State of Haryana, .

4. In view of the above, the reference is answered in favour of the assessee and against the Revenue.