**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

C.W.P. No. 16774 of 2004 (O&M)

Date of decision: 15.7.2016

M/s J. K. Trading Company .. Petitioner

vs

State of Haryana and others .. Respondents

**Coram: Hon'ble Mr. Justice Rajesh Bindal
Hon'ble Mr. Justice Hari Pal Verma**

Present: None for the petitioner.
Ms. Tanisha Peshawaria, Deputy Advocate General, Haryana.

Rajesh Bindal, J.

This order will dispose of two writ petitions bearing CWP Nos. 16774 of 2004 and 3203 of 2005, as common questions of law and facts are involved.

In CWP No. 16774 of 2004 challenge has been made to the orders dated 21.3.2003 (Annexure P-7), 10.12.2003 (Annexure P-8) and 21.9.2004 (Annexure P-9), whereas in CWP No. 3203 of 2005, challenge has been made to orders dated 14.11.2002 (Annexure P-7), 27.11.2002 (Annexure P-8) and 9.11.2004 (Annexures P-9 and P-10).

The issue raised is regarding taxability of the products manufactured by the exempted units with reference to Rule 28A (4) (c) of the Haryana General Sales Tax Rules, 1975 and notification dated 4.9.2005.

At the very outset, learned counsel for the State fairly conceded that the legal issue raised in the present petitions is squarely covered by judgment of Hon'ble the Supreme Court in Civil Appeal No. 1410 of 2007 *M/s CASIO India Co. Pvt. Ltd. vs State of Haryana*, decided on 29.3.2016. She further submitted that earlier order passed by the Tribunal in the case of STA No. 146 of 1997-98 *M/s Siemens Telecom Limited, Gurgaon vs The State of Haryana* was relied upon by the department before the Tribunal. The same was subject matter of GSTR No. 35 of 2006 *M/s Beetel Teletech Limited vs State of Haryana* before this Court and the question referred was answered in favour of the assessee vide judgment dated 8.7.2016 relying upon the judgment of Hon'ble the Supreme Court in *M/s CASIO India Co. Pvt. Ltd.*'s case (supra).

After hearing learned counsel for the State and considering her submissions, the writ petitions deserve to be allowed.

Hon'ble the Supreme Court in *M/s CASIO India Co. Pvt. Ltd.*'s case (supra), while dealing with the similar proposition, opined as under:-

> "19. We have reproduced the exemption notification above and referred to the language employed. At this juncture, it is absolutely necessary to understand the language employed in the proviso to the notification. If there was no proviso to the notification there would have been no difficulty whatsoever in holding that the exemption is qua the goods manufactured and was not curtailed or restricted to the sales made by the manufacturer dealer and would not apply to the second or subsequent sales made by a trader, who buys the goods from the manufacturer-dealer and sells the same in the course of inter-state trade or commerce. It is pertinent to note that, clause (ii) of sub-rule (n) refers to sale of

finished products in the course of inter-state trade or commerce where the finished products are manufactured by eligible industrial unit. There is no stipulation that only the first sale or the sale by the eligible industrial unit in Inter State or Trade would be exempt. The confusion arises, as it seems to us, in the proviso to the notification which states that the manufacturer-dealer should not have charged tax. It needs no special emphasis to mention that provisos can serve various purpose. The normal function is to qualify something enacted therein but for the said proviso would fall within the purview of the enactment. It is in the nature of exception. (See : Kedarnath Jute Manufacturing Co. Ltd. v. Commercial Tax Officer) Hidayatullah, J. (as his Lordship then was) in Shah Bhojraj Kuverji Oil Mills and Ginning Factory v.Subhash Chandra Yograj Sinha had observed that a proviso is generally added to an enactment to qualify or create an exception to what is in the enactment, and the proviso is not interpreted as stating a general rule. Further, except for instances dealt with in the proviso, the same should not be used for interpreting the main provision/enactment, so as to exclude something by implication. It is by nature of an addendum or dealing with a subject matter which is foreign to the main enactment. (See : CIT, Mysore etc. v Indo Mercantile Bank Ltd). Proviso should not be normally construed as nullifying the enactment or as taking away completely a right conferred.

20. Read in this manner, we do not think the proviso should be given a greater or more significant role in interpretation of the main part of the notification, except as carving out an exception. It means and implies that the requirement of the proviso should be satisfied i.e. manufacturing dealer should not have charged the tax.

The proviso would not scuttle or negate the main provision by holding that the first transaction by the eligible manufacturing dealer in the course by way of inter-state sale would be exempt but if the inter-state sale is made by trader/purchaser, the same would not be exempt. That will not be the correct understanding of the privies. Giving over due and extended implied interpretation to the proviso in the notification will nullify and unreasonably restrict the general and plain words of the main notification. Such construction is not warranted.

21. Quite apart from the above, Rule 28A(4) (c) supports the interpretation and does not counter it. The said rule exempts all intra-state sales including subsequent sales. The reason for enacting this clause is obvious. The intention is to exempt all subsequent stages in the State of Haryana and the eligible product can be sold a number of times, without payment of tax. Intra-state sales refer to sale between two parties within the State of Haryana. Inter-state transaction results in movement of goods from State of Haryana to another State. Thus, clause (ii) of sub-rule 2 (4) refers to inter-state trade or commerce and the notification does not refer to subsequent sales as in case of Rule 28A (4) (c). Whether or not tax should be paid on subsequent sales/purchase in the other State cannot be made subject matter of Rule 28A or the notification. Inter-State sale from the State of Haryana will be only once or not a repeated one. Therefore, there is no requirement of reference to subsequent sale. In this context, it is rightly submitted by the assessee that there is only one inter-State sale from the State of Haryana and the interpretation as suggested by the revenue would tantamount to making the exempted goods chargeable to tax, and the said goods would cease to enjoy the competitive edge given to the manufacturer in the State

> of Haryana. It will be counter-productive.
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> 22. In view of aforesaid analysis, we allow the appeals and set aside all the impugned orders and hold that the assesses shall reap the benefit of the notification dated 4.9.1995 as interpreted by us. There shall be no order as to costs."

For the reasons mentioned above, the writ petitions are allowed. The impugned orders passed by the authorities are set aside.

(Rajesh Bindal)
Judge

15.7.2016
vs

(Hari Pal Verma)
Judge