IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

GSTR No. 35 of 2006 (O&M)

Date of Decision: 08.07.2016

M/s Beetel Teletech Limited

.......Appellant

Versus

State of Haryana

......Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Saurabh Gautam, Advocate for
Mr. Rohit Khanna, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. A.G. Haryana.

RAJESH BINDAL,J.

The following question of law was referred to this Court for its opinion in view of the directions issued by this Court vide order dated 23.1.2016 passed in STC No. 3 of 2003:-

> “Whether the Notification, dated 4th September 1995, issued under Section 8(5) of the Central Sales Tax Act, 1956 is relatable to the exemption of goods or the person selling it?"

The case pertains to the assessment year 1995-96. The facts as noticed in the statement of case are reproduced hereunder:

> "M/s Siemens Telecom Limited, Now known as Bharti Systel Limited, Gurgaon is the registered dealer under the Haryana General Sales Tax Act, 1973 as well as Central Sales Tax Act, 1956. The firm is engaged in trading of Electronic Push Button Telephones manufactured by M/s Bharti Telecom Limited, Gurgaon. During the assessment year 1995-96 the appellant company purchased these goods from M/s Bharti Telecom Limited, Gurgaon as exempted goods and sold

the same within the State of Haryana as well as in the course of inter state trade and commerce. The assessing authority while framing the assessment treated them as exempted sales under the provisions of Rule 28 A (4) (c) on the production of declaration form ST-14A. However, the revisional authority taking up the matter suo motu held that exemption to the appellant on sale of such goods to the extent these were made by the appellant company in the course of inter state trade and commerce was not allowed and accordingly imposed tax on such transactions and created an additional liability against the appellant. The dealer filed an appeal before Sales Tax Tribunal, Haryana which was dismissed."

An identical issue came up for consideration before Hon'ble the Supreme Court in Civil Appeal No. 1410 of 2007, M/s CASIO India Co. Pvt. Ltd. Versus State of Haryana, decided on 29.3.2016, wherein considering the same notification under similar circumstance it was opined that at all subsequent stages, the goods manufactured by an exempted unit shall be exempted. The opinion expressed in paras 19 to 22 by Hon'ble the Supreme Court in the aforesaid case is extracted below:

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.

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.

As the question identical to one as referred to this Court by the Tribunal has already been answered by Hon'ble the Supreme Court, while following the same, we answer the question opining that the exemption as envisaged vide notification dated 4.9.1995 is relatable to goods and not the dealer. The reference is answered in favour of the petitioner.

The reference stands disposed of.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

08.07.2016
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