

**BEFORE THE HIMACHAL PRADESH TAX TRIBUNAL,
DHARAMSHALA, CAMP AT SHIMLA**

Appeal No. : 21 & 22/2018
Date of Institution : 03-10-2018
Date of order : 09-06-2022

In the matter of:

Micromax Informatics Limited,
Plot No, 234, HPSIDC, Baddi, Distt. Solan (HP).

.....Appellant

Vs

Excise and Taxation Commissioner-Cum- Appellate Authority
&
Assessing Authority-Cum-DETC, Flying Squad, South Zone,
Parwanoo, District Solan, Himachal Pradesh.

.....Respondent

Parties represented by:-

Miss Anu Sura, Advocate for the Appellant.
Shri Sandeep Mandyal, Law Officer for the Respondent.

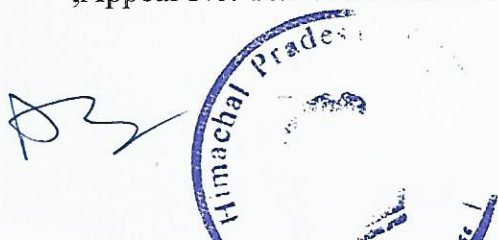
**Appeal under Section 45(2) of the Himachal Pradesh, Value Added
Tax Act, 2005**

Order

1. The present appeals have been filed against the order dated 30-01-2018 passed by the Ld. Excise and Taxation Commissioner (ETC)-Cum-Appellate Authority, Shimla, whereby he had upheld the order dated 13-05-2015, passed by Assessing Authority-cum-DETC, FS,SZ, Parwanoo, vide which a total additional demand of Rs. 24,52,973/- was created against the appellant for the assessment years 2013-14 &



- 2014-15, under the Himachal Pradesh Value Added Tax (VAT) Act, 2005 on account of differential VAT @ 8.75% and interest under section 19 of the Act *ibid*.
2. The brief facts of the case are that the appellant is registered under the HP Value Added Tax (VAT) Act, 2005 vide TIN 02020500697 and is engaged in the sale of mobile/cell phones, electronic and electrical goods. The DETC vide his order dated 13-05-2015, placing reliance on the judgment passed by the Hon'ble Supreme Court of India in the case of State of Punjab v. Nokia India Pvt. Ltd. AIR 2015 SC 1068 had held that the appellant was liable to pay VAT @13.75% on the chargers, which he was selling along with the mobile considering it as an accessory of such phones. He held that since the appellant was selling chargers separately, therefore it was required to pay separate VAT rate@13.75% on the chargers, sold along with the mobile phones. The appellant had paid VAT on the chargers @ 5% during the above assessment years and hence the DETC had directed him to pay the balance amount of tax @ 8.75% along with the interest vide his order. The appellant had resisted imposition of VAT @ 13.75% on the ground that the charger was part of the mobile phone and the same when sold along with the mobile phone could only be charged @ 5% which was the rate of VAT which being charged on the mobile phone sets. Vide the Assessment Order passed under Section 16 and 60 of the Himachal Pradesh VAT Act, 2005, the Ld. Dy. Excise and Taxation Commissioner confirmed differential VAT liability amounting to Rs. 1136554/- (including interest) under the HP VAT Act on the sale of cellphone chargers, sold along with cellphones in retail packs, during the period 1.04.2013 to 31.03.2014. The Appellant had initially discharged VAT at the rate of 5% on the entire retail package. The appellant had challenged the above order before the Ld. ETC who vide his order dated 30-01-2018 had dismissed his appeal therefore; the appellant has filed the present appeal.
3. At the outset the Ld. Counsel Ms. Anu Sura, Advocate for the appellant has submitted that the issues raised in the present appeal are similar to the issues raised in Appeal No. 12, 13, 14/2016 titled **M/s Samsung India Electronics Pvt. Ltd.**; Appeal No. 10/2016 titled **M/s Nokia India Sales Pvt. Ltd.**, and Appeal No 4/2017



titled **Sony India Pvt. Ltd. v/s. Assessing Authority-cum-Deputy Excise and Taxation Commissioner, Flying Squad, South Zone, Parwanoo** on which a detailed order had already been passed by this Tribunal in which it had been held that the chargers were liable to be charged VAT @ 5% and not @ 13.75% when sold along with the mobile phones and therefore, it has been prayed that the present appeal may be disposed of in terms of the order dated 14-06-2017 passed by the above Bench.

4. The Ld Counsel also contested that the Ld. Appellate Authority while passing the impugned Order failed to appreciate that the Appellant's case is squarely covered by the final order of this Tribunal on the issue of classification of battery charger sold in a retail pack along with mobile phone in the matter titled *M/s Nokia India Sales Pvt. Ltd. v/s Excise and Taxation Commissioner* in 2017 VIL 16 TRB (hereinafter referred to as "**Nokia vs. ETC (supra)**"). This Tribunal, while deciding the issue favour of the assessee had held that:

Para 19 " Therefore, in view of the specific entries in entry 57 of the H.P. VAT Act, the clarification regarding interpretation of General Rules of Interpretation of HSN appended to Customs Tariff Act, 1975 given by Ministry of Finance dated 30.11.2015 (post the Nokia Judgment), various judicial precedents on the common parlance test, and essential characteristics test of composite goods, I am inclined to hold that a charger ought to be levied a tax equivalent to the rate of tax as levied on the cell phone."

5. The Respondent's primary contention is that in the Supreme Court's *State of Punjab and Ors. Vs. Nokia India Pvt. Ltd;*(2014)16 SCC 410, dated 17.12.2014 (hereinafter referred to as "**Nokia Case (supra)**"), a decision was given in context of Punjab VAT Act, wherein it is held that battery charger is not a part of the mobile phone and hence the charger, even in a composite pack is liable to be taxed separately.



6. The appellant has mentioned that Courts in various States have distinguished the Apex Court judgement in *Nokia Case (supra)* and have decided the question related to classification of chargers along with cell-phones in composite retail packs *inter alia* by reading the relevant entry in the respective State VAT Act independently. Some of these decisions in which *Nokia Case* has been distinguished are: Hon'ble Allahabad High Court in *Samsung India Electronics Private Limited v. State of UP2016-TIOL-2927-HC-ALL-IT* dated 01.08.2016 and *Samsung India Electronics Private Limited v. Commissioner Of Commercial Taxes U.P. Lucknow* in STR No.-479 of 2017 dated 18.01.2018
7. Further, she informed that **Karnataka Appellate Tribunal's** decision dated 10 March 2021, in a batch of appeals held that the decision in *Nokia Case* is not applicable to classification under Karnataka VAT Act.
8. Sh. Sandeep Mandyal Ld. Law Officer, for the Respondent has contended that the appeal may be quashed and the impugned order dated 30-01-2018 of Excise and Taxation Commissioner-Cum- Appellate Authority may be upheld. He submitted that the Micromax was charging VAT @ 13.75% on the sale of cell phone chargers sold separately but on the cell phone chargers which are sold along with the cell phones in a single package, the same were being taxed @ 5% only. Therefore, the levy of differential tax @ 8.75% on the sale of cell phone chargers sold in a single pack along with the cell phones in the years 2013-14 and 2014-15 and interest under section 19 of the HP VAT Act, 2005 by the respondent was within the legal provisions and the order dated 13-05-2015 passed by the DETC-Cum-Assessing Authority Flying Squad, South Zone, Parwanoo and ETC-Cum-Appellate Authority respectively deserves be upheld.
9. I have heard both the parties and have also perused the law on the subject. In view of the reason below, **the present appeal is accepted and orders of Assessing Authority dated 13-05-2015 and 1st Appellate Authority dated 30-01-2018 are quashed and set aside** in view of the following reasons outlined below:-
- (i) In terms of the order dated 14-06-2017 passed by another Bench of this Tribunal, I find that the issues involved in the present appeal are similar to the

issues raised in the Appeal No. 10 & 12 & 14/2016 and Appeal No. 4/2017. It is also observed that the order dated 14-06-2017 is quite detailed and reasoned with which I agree.

- (ii) The Hon'ble Allahabad High Court in its order dated 18.01.2018 in the matter titled *Samsung India Electronics Private Limited v. Commissioner Of Commercial Taxes U.P. Lucknow* in STR No.-479 of 201, while disposing off a batch of revision petitions with facts similar to the instant matter, relied on the "dominant intention" or the "dominant nature" test, inter alia, other grounds to hold that differential rate of tax would not apply to sale of chargers in a composite retail pack and the same would be taxed at the rate applicable to the cell-phones.
- (iii) The latest Karnataka Tax Tribunal orders in a batch of appeals has stated that the sale of chargers along with cell phones is a composite contract. The Karnataka Tax Tribunal in its order clearly described composite supply levy of tax as following:-

'Therefore, in view of the above said discussion and when bench is of the common view that in all the cases when the MRP includes value of the mobile and mobile chargers, in view of specific entry 53 in third schedule of Karnataka Value Added Tax Act, 2003 Act, the clarification regarding interpretation of General rules of interpretation of HSN code of Custom Tariff Act, various Judicial pronouncement on the common parlance test, and applicability of essential characteristics test for goods put up sets for retail sale, we are inclined to hold that the charger when sold in composite box ought to be levied a tax equivalent to the rate of tax as levied on the mobile phone/cell phone and tax would not be levied at residuary rates by splitting the values. However, if the mobile chargers are sold independently than in composite package, then tax has to be levied at residuary rates only.'



For above reasons the order of Assessing Authority dated 31-05-2015 and the order of 1st Appellate Authority dated 30-01-2018 are quashed and set aside.

10. Copy of this order be sent to the parties concerned. File after due completion be consigned to the record room.



(Akshay Sood)
Chairman,
HP Tax Tribunal,
Camp at Shimla

Endst. No HPTT/CS/2022- 13670/40

Dated 09-06-2022

Copy to:-

1. The Commissioner State Taxes & Excise, Himachal Pradesh, Shimla-09.
2. The Deputy Excise and Taxation Commissioner, FS, SZ, Parwanoo.
3. M/s Micromax Informatics Ltd. Plot No. 234, HPSIDC, Industrial Area, Baddi, Distt. Solan.
4. Miss Anu Sura, Advocates for the respondent.
5. The Sandeep Mandyal, Law officer O/o Commissioner of State Taxes & Excise.



Reader
HP Tax Tribunal
Camp at Shimla