

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

Rectification Application No. : 3/2018
Date of Institution : 09-05-2018
Date of order : 28-05-2022

In the matter of:

State of Himachal Pradesh & Ors.

.....Appellant

Vs

M/s Nokia India Sales Pvt. Ltd.

.....Respondent

Parties represented by:-

Shri Sandeep Mandyal, Law Officer for the Appellant

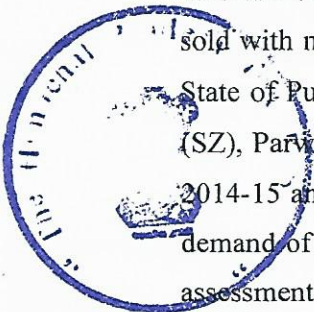
Shri Krishna Rao and Sh Varun Gupta Advocates for the Respondent

**Appeal under Section 47(1) of the Himachal Pradesh, Value Added
Tax Act, 2005**

Order

1. The present application has been filed by State of Himachal Pradesh & ors under section 47(1) of the Himachal Pradesh Value Added Tax Act, 2005 (VAT Act) praying for rectification of the order dated 19-06-2017 passed in Appeal No. 10/2016 by this Tribunal, wherein the Tribunal had allowed appeals in favor of the assessee and the order passed by the Excise and Taxation Commissioner, Himachal Pradesh in Appeal No. 41/2015-16 was set aside.

2. The Brief facts of the case are that in the main appeal which was decided by the Tribunal on 19.06.2017, the issue involved was taxability of mobile battery chargers sold with mobile phones in composite pack. Relying upon the judgment reported as State of Punjab Vs. M/s Nokia India Pvt. Ltd., 2014 (16) SCC 410, the DETC (FS) (SZ), Parviano assessed the assessee/respondent for the years 2012-13, 2013-14 and 2014-15 and charged tax on mobile battery chargers at the general rate and created a demand of Rs. 52,15,666/- including interest. The First Appeal was filed against the assessment orders for aforesaid assessment years and the Ld. First Appellate Authority i.e. Excise and Taxation Commissioner, upheld the demand created by the Assessing Authority. Aggrieved against order of Ld. First Appellate Authority, the



respondent filed further appeal before this Tribunal. The above mentioned judgment of Nokia (India) Pvt Ltd. was distinguished by this Tribunal and appeals of the respondent/assessee were accepted vide order dated 19.06.2017. While disposing off the appeals of the respondent/assessee (Appeal No. 10/2016), this Tribunal passed a well reasoned speaking order. Now the applicants/State has filed rectification application under Section 47(1) of HPVAT, 2005 seeking rectification of the order dated 19.06.2017 passed by this Tribunal.

3. Aggrieved by the order of the Tribunal, the main ground taken in the present Application by State is that the Tribunal while passing the order dated 19.06.2017 passed in Appeal No 10/2016, has not considered the judgment of Hon'ble Supreme Court passed in the case of **State of Punjab Vs. M/s Nokia India Pvt. Ltd., 2014 (16) SCC 410**. The State is pleading that the non implementation of the Nokia's judgment is an error apparent from the record and thus has filed the present Application on grounds that can be summarized as under:-

- (i) *While passing order dated 19.06.2017 passed in Appeal No 10/2016, "has miserably failed to appreciate the decision rendered by the Hon'ble Supreme Court vide Judgment dated 17.12.2014 in State of Punjab Vs. M/s Nokia India Pvt. Ltd., 2014 (16) SCC 410".*
 - (ii) *Order of the Tribunal runs contrary to the provisions of the VAT Act and the same requires rectification under Section 47(1).*
 - (iii) *While submitting on merits it is pleaded that the mobile charges are liable to be taxed at the Rate of 13.75%, since it is not so ordered by the Tribunal, the Order dated 19.06.2017 requires to be rectified.*
 - (iv) *The case is not strictly decided as per provisions of the Act and as per the directions of the Hon'ble Supreme Court and therefore, the same is required to be rectified/clarifies by the Tribunal.*
- (v) *Reliance is placed on judgment of Honda Siel Power Products Ltd. Vs. Commissioner of Income Tax (2008) 12 VST 500 (SC).*

4. Sh. Sandeep Mandyal, Law Officer, for the State contended that the rectification appeal may be accepted and impugned order dated 19-06-2017 of the tribunal be quashed. He submitted that the present respondent was charging VAT @ 13.75% on the sale of cell phone chargers sold by it 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 2012-13, 2013-14 and 2014-15 (upto Nov. 2014) and interest under section 19 of the HP VAT Act, 2005 by the respondent was within the legal provisions and the order dated 16.04.2015 and 16.12.2015 passed by the DETC-Cum-Assessing Authority Flying

Squad, South Zone, Parwanoo and ETC-Cum-Appellate Authority respectively deserve to be upheld.

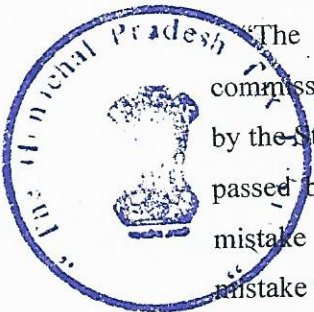
5. The Ld Counsel for the respondent, Sh. Krishna Rao stated that the order of this Hon'ble Tribunal does not suffer from any mistake as is apparent from record. In the garb of rectification application the applicant wants this Tribunal to re-hear the matter on merits, which is not permissible under section 47 of HPVAT Act, 2005. The main issue involved was taxability of mobile battery chargers sold with mobile phones in composite pack. Relying upon the judgment reported as State of Punjab Vs. M/s Nokia India Pvt. Ltd., 20114 (16) SCC 410, the DETC (FS) (SZ), Parwanoo has assessed the assessee/ respondent for the years 2012-13, 2013-14 and 2014-15 and charged tax on mobile battery chargers at the general rate and created a demand of Rs. 52,15,666/- including interest. The above mentioned judgment of Nokia (India) Pvt. Ltd. was distinguished by this Tribunal and appeals of the respondent/assessee were accepted vide order dated 19-06-2017. The Apex Court in the case of Micromax stated that if the Nokia case is distinguishable, the same be considered. Accordingly, Allahabad High Court in matter of **Samsung (India) Electronics Private Limited versus Commissioner of Commercial Taxes, Lucknow** reported in **2018 (11) GSTL 367** while dealing with the order of the Tribunal in the said matter distinguished the judgment of Hon'ble Apex Court delivered in the case of State of Punjab Vs. Nokia India 2014 (16) SCC 410 and held that no separate tax could be charged on the mobile chargers sold in a composite pack containing Cell Phone. Hence, as per the respondent the issue stands settled in favour of the respondent/assessee.
6. **I have heard the** learned Government counsel and the learned counsel for the respondent.

The short point that arises for consideration is whether it is a fit case for rectification under Section 47 of the HP VAT Act or not?

Section 47 of the Himachal Pradesh Value-Added Tax Act, 2005, allows rectification of mistake, as stated below:

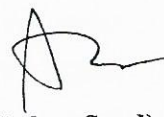
The Tribunal or Commissioner or the officer on whom powers of the commissioner for the purposes of sub-section (1) of section 46 have been conferred by the State Government may at any time within one year from the date of any order passed by him on an application made to him or of his own motion, rectify any mistake apparent from the record, and shall within a like period rectify any such mistake which has been brought to his notice by any person affected by such."

7. The controversy is very narrow. There is not much dispute about the facts. In any event, this Tribunal has to, in its reference jurisdiction consider the questions of law referred to it on the basis of facts found by the Tribunal order dated 19.06.2017.
8. A reading of provisions under Section 47 of HP Vat Act makes it clear that this provision can be invoked to rectify any mistake apparent from record. It is well



settled law that a mistake apparent on record must be patently glaring and not to be discovered by further investigation or an enquiry or considering the arguments or proof of a debatable issue. The scope of rectification is limited. The same cannot be enlarged to re-examine the concluded issues on which there may be permissible different opinions. The Authority becomes functus officio on concluding the proceedings and the same cannot be re-opened to revisit the concluded issues in the guise of rectification.

9. It is thus evident that there is no mistake apparent in this Tribunal order dated 19-06-2017 nor is there any documentary evidence or point of submission missed by inadvertence/oversight by this Tribunal in the appeal records; there is no ground whatsoever to rectify the mistake as per Sub-section(1) of Section 47 of the HP VAT Act. Further, the impugned order dated 19-06-2017 cannot be held to be a non-speaking order as it is a very detailed order which has examined various Laws/Judgment while passing its orders. The rectification of an order does not mean obliteration of the order originally passed and its substitution by a new order. For the aforesaid reasons, **the appeal does not merit any consideration and is dismissed. The impugned order of the Tribunal dated 19.6.2017 is upheld**, with liberty to the petitioner to resort to appropriate proceedings in accordance with law.
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- 77

Dated 30-05-2022

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 Nokia India Sales Pvt. Ltd., Shop NO. 3, Plot No. 42, Sector-2, Gabriel Road, Parwanoo.
4. Shri Krishna Rao and Shri Varun Gupta, Advocates for the respondent.
- ✓ 5. The Sandeep Mandyal, Law officer O/o Commissioner of State Taxes & Excise.


Reader
HP Tax Tribunal
Camp at Shimla