

Rajasthan Tax Board, Ajmer

M/s Suresh Infotech,
G-7, Bais Godam Industrial Area,
JaipurAppellant

VERSUS

Assistant Commissioner
Anti-Evasion, Rajasthan-I,
JaipurRespondent

1. Appeal No. 2164/2016/Jaipur
2. Appeal No. 2165/2016/Jaipur
3. Appeal No. 2166/2016/Jaipur
4. Appeal No. 2167/2016/Jaipur

Assistant Commissioner
Anti-Evasion, Rajasthan-I,
JaipurAppellant

VERSUS

M/s Suresh Infotech,
G-7, Bais Godam Industrial Area,
JaipurRespondent

5. Appeal No. 255/2017/Jaipur
6. Appeal No. 256/2017/Jaipur
7. Appeal No. 257/2017/Jaipur
8. Appeal No. 258/2017/Jaipur

D.B.

SHRI NATHU RAM, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Sidharth Ranka and
Shri Muzaffar Iqbal
Advocates
Shri Jameel Zai,
Dy. Govt. Advocate

for Assessee

for Revenue

Dated : 10/08/2018

JUDGMENT

1. Appeal nos. 2164 to 2167/2016/Jaipur have been filed by the appellant dealer (hereinafter referred as the "assessee") and appeal nos. 255 to 258/2017/Jaipur have been filed by the Revenue against order of the Appellate Authority-I, Commercial Taxes Department, Jaipur (hereinafter called the "appellate authority"), dated 26.09.2016, wherein the levy of tax and interest was upheld but the penalty under section 61 was set aside, as were imposed by the Assistant Commissioner, Anti-Evasion, Rajasthan-I, Jaipur (hereinafter called the "assessing officer" or the "AO"), vide his order dated 11.04.2016 passed under Section 26, 55 and 61 of the Rajasthan Value Added Tax Act, 2003 (hereinafter called the



"Act"). The details of the appellate orders as well AO's orders are as under: -

Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Authority's order Details			
		Appeal No.	order dated	order dated	Tax	Interest	Penalty
2164/2016 255/2017	2009-10	93/AA-I/ RVAT/JPR/16-17	26.09.2016	11.04.2016	1434348 -	1144456 -	- 2868696
2165/2016 256/2017	2010-11	94/AA-I/ RVAT/JPR/16-17	26.09.2016	11.04.2016	943650 -	639750 -	- 1887300
2166/2016 257/2017	2011-12	95/AA-I/ RVAT/JPR/16-17	26.09.2016	11.04.2016	1425838 -	795486 -	- 2851646
2167/2016 258/2017	2012-13	96/AA-I/ RVAT/JPR/16-17	26.09.2016	11.04.2016	380534 -	166698 -	- 761068

2. Since all the appeals involve common issues, therefore, the same are decided by a common order. Copy of the order be placed on each relevant appeal file.
3. Brief facts leading to the present appeals are that the assessee is dealing, apart from other goods, in laptops, tablets, laptop battery, chargers/adapters of laptops & tablets and was paying tax on these goods @ 5% as notified under Schedule-IV of the Act, but the Anti-Evasion Officials after conducting survey of business place of the assessee, found that the assessee has sold the laptops in a composite pack which comprised of laptop battery, laptop adapter, laptop charger etc and collected & deposited the tax @ 4% or 5%, as applicable during the relevant period, by treating the goods as 'IT Products'. The AO after his detailed findings held these products as not covered under the Schedule-IV (Part-A) instead held it to be taxable at residuary tax rate of 12.5% or 14% as applicable during the relevant period for Schedule-V goods, and levied differential tax, interest and also imposed penalty u/s 61 of the Act.
4. Aggrieved of this imposition the assessee preferred appeals before the appellate authority who partly accepted the appeals vide his order dated 26.09.2016, in which the levy of tax and interest was upheld and the penalty was set aside. Aggrieved of the same, the assessee as well as the Revenue are in appeal before the Tax Board u/s 83 of the Act.

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5. Learned advocates appearing for the assessee submits that the assessee sells laptops in a composite pack which alongwith the laptop itself, comprises of charger/adaptor including power cord, and charges tax as per entry 3 of the Schedule-IV. The assessing authority has unnecessarily and hypothetically segregated the composite pack of the laptop into- i) Laptop as taxable under Schedule-IV, and ii) Battery charger/adaptor etc. to be taxable under Schedule-V of the Act. He submits that unlike in the case of mobile phones, the laptop cannot be charged from other mode except for the particular charger of that brand, so by no stretch of imagination the laptop chargers can be placed under the category similar to that of the mobile phones. He further submits that the battery charger has always been considered to be an integral part of the laptop/tablet. He further laid emphasis on a judgment dated 18.01.2018 of the Hon'ble Allahabad High Court in the matter of **Samsung (India) Electronics (P.) Ltd. Vs Commissioner of Commercial Taxes, U.P. [2018] 90 taxmann.com 92 (All.)** wherein it has been held that in a composite pack, though chargers were supplied along with the primary article i.e. mobile phone, there was no intention of the parties to enter into a transaction involving sale of charger and that it merely happened to be part of a composite package and supply of charger was only collateral, therefore, the charger would not be exigible to tax separately.
6. He further highlighted a Government of India (GoI) office note sent to all the State Governments to treat the chargers /batteries etc. of Mobile Phones/Laptops as part of that product. He referred a judgment of the Hon'ble Rajasthan High Court - **Marathon India Ltd. Vs. CTO (2016) 26 VAT Reporter 289 (Raj.)** and tried to draw an analogy with that decision wherein the 'Battery' has been held to be a part of the object it is used into, i.e. RCR (Radio Communication Receiver). He further informed that the Hon'ble Supreme Court in SLP No. 28448-28450/2015 **Micromax Informatics Ltd. Vs. State of Himachal Pradesh** has allowed the petitioner to file additional objection by bringing notice of the authorities that the judgment rendered by the Hon'ble Court (SC) in Civil Appeal No. 11486-87/2014 '**State of Punjab Vs Nokia India Pvt. Ltd.**' [2015] **77 VST 427 (SC)**, is 'distinguishable'. Thus, he requests to accept his appeals and disallow the appeals filed by the Revenue.

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7. Per contra, the learned Deputy Government Advocate appearing for the Revenue argues that the products in question are not integral part of the laptop/tablet, therefore, those are exigible to tax at residuary rate and that AO has rightly levied tax as per Schedule-V and that judgement of the Hon'ble Supreme Court in Nokia's Case (supra) fully applies in this case also. He further submits that since the assessee has willfully placed these products under the lower tax bracket, therefore, the AO has rightly imposed penalty under section 61 of the Act. He, therefore, requests to reject the appeals of the assessee on the issue of taxability of the items in question at higher rate of tax and to restore the penalty as set aside by the appellate authority.
8. We have gone through the submission of both the parties, perused the relevant record and explored relevant literature of the products in question. The issue here, essentially, is as to whether the chargers of laptop sold in a composite pack along with the main product bearing only one MRP and sold as such by the assessee- (i) should construe to be a necessary part/accessory/component of the laptop in whole and whether Nokia's judgment regarding mobile chargers is in anyway, distinguishable w.r.t. the chargers of laptop; and (ii) whether the AO was right to levy tax on a necessary component of the laptop in a composite pack for which no separate value was charged by the assessee.
9. Before going into the main issues as mentioned above, it is imperative to go through the judgment of the Hon'ble Supreme Court in Nokia's case (supra).

"It was contended that composite goods being used consisting of different materials and different components, and goods put up in sets for retail sale, cannot be classified by reference to Clause (a). However, such submission cannot be accepted as it cannot be held that charger is an integral part of the mobile phone making it a composite good. Merely, making a composite package of cell phone charger will not make it composite good for the purpose of interpretation of the provisions. The word 'accessory' as defined in the Webster's Comprehensive Dictionary (International) Volume-I is defined as:

a person or thing that aids subordinately; an adjunct; appurtenance; accompaniment (2) such items of apparel as complete an outfit, as gloves, a scarf, hat or handbag. (3) A person who, even if not present, is concerned, either before or after, in the

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*perpetration of a felony below the crime of treason.
Adj.(1) Aiding the principal design, or assisting
subordinately the chief agent, as in the commission
of a crime.(2) contributory; supplemental;
additional: accessory nerves.*

18. In *M/s. Annapurna Carbon Industries Company v. State of Andhra Pradesh (1976) 2 SCC 273*, this Court while examining the question whether "Arc Carbon" is an accessory to cinema projectors or whether comes under other cinematography equipments under Entry 4 of Schedule I to the A.P. General Sales Tax Act, 1957, defined accessories as:

an object or device that is not essential in itself but that adds to the beauty, convenience or effectiveness of something else.

19. In view of the aforesaid facts, we find that the Assessing Authority, Appellate Authority and the Tribunal rightly held that the mobile/cell phone charger is an accessory to cell phone and is not a part of the cell phone. We further hold that the battery charger cannot be held to be a composite part of the cell phone but is an independent product which can be sold separately, without selling the cell phone. The High Court failed to appreciate the aforesaid fact and wrongly held that the battery charger is a part of the cell phone."

10. Hon'ble Allahabad High Court in the matter of **M/s Samsung (India) Electronics Pvt. Ltd. Vs CCT U.P.** (STR No. 479/2017 judgment dated 18.01.2018) has held that a single retail package of mobile phone which bears one MRP cannot be severed and the articles contained therein assessed separately. The Hon'ble Court has further held that the sale of the mobile phone alongwith its charger in a single retail package constitutes a composite contract and requires the application of the 'dominant intention test' which was neither urged nor considered by the Supreme Court. The Supreme Court consequently in Nokia's case did not record any finding nor did it declare the law to be that the sale of a mobile phone and its charger in a single retail package would not constitute a composite contract. The circular of the Government of India dated 13 November 2015 as well as the provisions of the 1963 Rules also do not appear to have been brought to the attention of the Court. The Hon'ble High Court has held as under:

"28. The contention which is urged before this Court namely that the sale of the mobile phone along with its charger in a single retail package constitutes a composite contract and requires the application of the dominant intention test was

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neither urged nor considered by the Supreme Court. The Supreme Court consequently in Nokia did not record any finding nor did it declare the law to be that the sale of a mobile phone and its charger in a single retail package would not constitute a composite contract. This Court must also necessarily take note of the fact that the circular of the Government of India dated 13 November 2015 as well as the provisions of the 1963 Rules which are noticed in the decision of the Himachal Pradesh Tax Tribunal also do not appear to have been brought to the attention of the Court. The entry of the Punjab VAT Act in the backdrop of which the decision itself came to be rendered is also distinct from the one which stands embodied in the 2008 Act. The distinguishable features of the judgment of the Supreme Court in Nokia was also noticed by the Division Bench in Samsung. The Court must also additionally note that the submissions urged by Shri Gulati namely that a single retail package which bears one MRP cannot be severed and the articles contained therein assessed separately was also one which was neither urged nor canvassed in Nokia and therefore consequently not considered.

29. On an overall consideration of the aforesaid aspects, this Court finds itself unable to hold that Nokia is a precedent at all on the question of a composite contract being subjected to tax."

11. The Hon'ble Allahabad High Court has further held that in such cases of composite supply, looking into the 'Dominant Intention Test', in the facts of the case, there does not appear to have existed any intention of the assessee to affect a separate or distinct sale of the charger and has held the supply of charger as only collateral. The Hon'ble Court has held as under:

" 36. Proceeding then to the doctrine of "dominant intention" or the "dominant nature" test [as the Supreme Court chose to describe it in BSNL], what it basically bids the Court to do is to identify and recognize the "substance of the contract" and the true intent of parties. The enquiry liable to be undertaken must pose and answer the question whether in a composite contract there exists a separate and distinct intent to sell. While BSNL dealing with the dominant nature test was

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concerned with the splitting of the element of sale and service, in the facts of the present case, the application and invocation of that principle requires the Court to consider whether there was a separate and distinct intent to effect a sale of the charger or whether its supply was a mere concomitant to the principal intent of sale of a mobile phone.

37. Admittedly, the mobile phone and charger are sold as part of a composite package. The primary intent of the contract appears to be the sale of the mobile phone and the supply of the charger at best collateral or connected to the sale of the mobile phone. The predominant and paramount intent of the transaction must be recognized to be the sale of the mobile phone. In the case of transactions of the commodity in question, the Court must also bear in mind that a charger can possibly be purchased separately also. However in case it is placed in a single retail package along with the mobile phone, the primary intent is the purchase of the mobile phone. The supply of the charger is clearly only incidental. In any view of the matter, there does not appear to be any separate or distinct intent to sell the charger. Regard must also be had to the fact that the Court is considering the case of a composite package, which bears a singular MRP. The charger is admittedly neither classified nor priced separately on the package. It is also not invoiced separately. The MRP is of the composite package. The respondents therefore cannot be permitted to split the value of the commodities contained therein and tax them separately. This especially when one bears in mind that entry 28 itself correlates the article to the MRP.

39. The Court additionally must also bear in mind that in the case of a composite contract, the true

enquiry which must be undertaken is to cull out what the parties intended to buy and sell. As has been noted hereinabove, in the facts of the present case there does not appear to have existed any intention of the assessee to affect a separate or distinct sale of the charger. The Court notes that no separate price was fixed or declared for the charger. In fact the commodity was also not separately identified on the package. The charger was supplied along with the primary article which formed the bedrock of the transaction namely, the mobile phone. There was thus no intention of the parties to enter into a transaction involving the sale of the charger. It merely happened to be part of the composite package. As noticed hereinabove, the supply of the charger was only collateral."

12. The Hon'ble Supreme Court in the matter of **Bharat Sanchar Nigam Ltd. Vs Union of India (2006) 145 STC 91 (SC)** has observed that in a transaction of sale of goods, the courts have to see as to what the parties had intended when they entered into a particular transaction of sale. The relevant portion of the said judgment is reproduced hereunder:

" 50. What are the "goods" in a sales transaction, therefore, remains primarily a matter of contract and intention. The seller and such purchaser would have to be ad idem as to the subject-matter of sale or purchase. The court would have to arrive at the conclusion as to what the parties had intended when they entered into a particular transaction of sale, as being the subject-matter of sale or purchase. In arriving at a conclusion the court would have to approach the matter from the point of view of a reasonable person of average intelligence."

In the present case too, if we delve into the intention of the parties- the buyer and the seller, from a viewpoint of a reasonable person of average intelligence, we find that there was neither a contract nor an intention to buy or sell the charger apart from the laptop. So, from the dominant nature test as well as from the view point of a person of average intelligence, it can

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be concluded safely that the 'charger' *per se* was not subject matter of the sale or purchase or that the parties had not intended to enter into a contract to sell the same.

13. It is also worth mentioning that the Government of India has issued a clarification and sent advisory to all the State Governments regarding clarification of accessories, in which, by quoting the Customs (Accessory Conditions Rule, 1963), it has been informed that accessories supplied compulsorily free with an article attract the same rate of duty, which is applicable on the imported articles. The said office memorandum of the GoI is reproduced hereunder:

"F.No. 34011/18/2015-SO (ST)"

**Ministry of Finance
Department of Revenue
State Taxes Division**

New Delhi, the 30th November, 2015

OFFICE MEMORANDUM

Subject: Accessories clarification-interpretation by some State Governments on a point of Hon'ble Supreme Court Judgement for the purpose of taxation-regarding.

The undersigned is directed to refer to the representation of the National President, Indian Cellular Association dated 23.09.2015 addressed to Union Finance Minister and a copy of letter dated 28.10.2015 addressed to Secretary Deptt. of Revenue on the subject noted above (copy enclosed) and to say that the Supreme Court has taken the position that a "Mobile Charger" is not a part of Mobile but an accessory. This judgment has been interpreted by some States to imply that mobile chargers sold as a single unit with the mobile phone is to be taxed separately.

2. In such cases, the Government of India, based on the Customs (Accessory Conditions Rule, 1963) notified by notification no. 18-Cus dated 23.01.1963, specifically provides that accessories compulsorily supplied free with an Article attract the same rate of duty, which is applicable on the imported Articles

3. As this matter impacts the entire range of consumer electronic products, the State may also consider taking the view that accessories be treated as a part of the main item when they are sold bundled together as a single unit.

(Mahendra Nath)

Under Secretary to the Govt. of India

To

All State, Commercial Tax Commissioners"

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14. For ready reference, the Customs' "the Accessories (Condition) Rules, 1963" are reproduced as follows:-

"THE ACCESSORIES (CONDITION) RULES, 1963

Notification No. 18-Customs, dated 23rd January, 1963

In exercise of the powers conferred by section 156 of the Customs Act, 1962 (52 of 1962), the Central Government hereby makes the following rules, namely:—

RULE 1. These rules maybe called the Accessories (Condition) Rules, 1963.

RULE 2. Accessories of and spare parts and maintenance or repairing implements for, any article, when imported along with that article shall be chargeable at the same rate of duty as that article, if the proper officer is satisfied that in the ordinary course of trade :—

(i) such accessories, parts and implements are compulsorily supplied along with that article; and

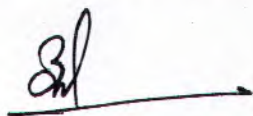
(ii) no separate charge is made for such supply, their price being included in the price of the article.

So, if these rules are adhered to for the purpose of taxability or rate of tax as such on accessories like laptop charger, this accessory item shall be treated as a part of the main item when it is sold bundled together as a single unit and higher rate of tax more than that payable on the main item, can't be levied.

15. Before arriving at any definite finding it is important to discuss if the findings of the Hon'ble Supreme Court regarding 'availability of alternate modes of charging the cell phone' applies in the case of laptops too. It is reasonably known fact that a particular brand of laptop is charged through the charger of that company/brand only and, unlike the cellphone chargers, no alternate mode to charge that laptop is generally available in the market. So, with utmost respect to the judgment of the Hon'ble Supreme Court in Nokia's case, the present matter is distinguishable one. Moreover, if we go by the judgment of the Hon'ble Supreme Court in **Bharat Sanchar Nigam Ltd Vs. Union of India's case (2006) 145 STC 91 (SC)**, (in short the 'BSNL case'), the Hon'ble Larger Bench has laid down the parameters the adjudge the sale of goods by "dominant nature test" and to arrive at a conclusion from a "point of view of a reasonable person of average intelligence". So, when we study the issue at hand by these two parameters, the conclusion invariably is that the dominant intention is sale or purchase of the laptop only and, by natural corollary, the supply of charger alongwith it in a composite pack, is only incidental and collateral to the sale of

the main product i.e. laptop. Not only this, any reasonable person of average intelligence while purchasing a laptop understands well in his conscious or sub-conscious mind the charger would come along it free or at best the price of such charger is inclusive in the price of the composite pack of laptop. The buyer never asks about the amount he has to pay for the charger or never bargains for it. The learned DGA however could not controvert this fact or show if a laptop, like a cell phone, can be charged from any other device other than its charger or charger of same brand/manufacturer.

16. It is true that in the Rajasthan VAT Schedule-IV Part A, at entry 28, only parts of the items as mentioned at serial no. 1 to 27 were notified to be taxable at the rate of 5% till 05.03.2013 and the term 'accessories' was added in this entry w.e.f. 06.03.2013, therefore, the dispute essentially relates to the period prior to 06.03.2013. For taxation of the 'accessories' as supplied free with the main product, the clarification issued by the Central Government dated 30.11.2015 which is based on the Customs (Accessories Condition) Rule, 1963 must be given due credence in absence of any such rules being in prevalence at the State level and the clarification as given in the office memorandum as sent to all the States seems reasonable and compelling to be followed in the present matter. So, based on this clarification by the Gol it can be safely concluded that the 'charger of laptop' which is supplied free of cost or the cost thereof is embedded into the single MRP of the composite pack, shall attract the same rate of tax as applicable on the laptop.
17. In light of the discussion hereinabove; the judgment of the Hon'ble Allahabad High Court in Samsung's case (supra); clarification issued by the Gol dated 30.11.2015; and the matter of fact that the Hon'ble Supreme Court in Micromax's case has allowed the petitioner to file Additional Objection before the authorities terming the Nokia's judgment as 'distinguishable', we are of the considered view that the battery charger supplied along with the laptop in a composite pack bearing a single MRP, shall form part of the composite item called 'laptop' and no separate tax at residuary rate can be levied on this component. Even if, its estimated cost/price is carved out from the composite MRP, the tax on that portion would be chargeable at the same rate^{as} that of the laptop.
18. So far as the issue of imposition of penalty under section 61 of the Act is concerned, it has been held by the Hon'ble Supreme



Court as well as the Hon'ble Rajasthan High Court that where the transactions are entered in the books of accounts of the assessee and the dispute relates to classification of goods or rate of tax only, the penalty provisions should not be invoked in such cases. The judgments worth mentioning in this regard are:-

- (i) Shree Krishna Electricals Vs. State of Tamil Nadu & Another (2009) 11 SCC 687
- (ii) Reckitt Benckiser India Ltd Vs. ACTO, SB STR No. 7/2012 order dated 07.04.2017 (RHC)

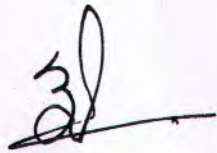
19. Moreover, this has been a consistent view of the Hon'ble High Court as well as the Rajasthan Tax Board that penalty u/s 61 of the Act is not maintainable if the issue essentially relates to classification of goods or rate of tax and that transactions are entered in the books of accounts of the assessee. Since the present matter also relates to a dispute about rate of tax only and this fact is not in dispute that the transactions were well recorded in the books of accounts of the assessee, therefore, the penalty as levied under section 61 of the Act by the AO, does not stand justified in light of the above mentioned judicial pronouncements, and the same has rightly been set aside by the appellate authority. On this count, the appellate order is confirmed and appeals of the Revenue deserve to be disallowed.
20. It is also worth mentioning that the co-ordinate benches of the Rajasthan Tax Board in the following judgments, have held the battery charger to be an accessory of the mobile phone/laptop, therefore, taxable at the residual rate:-
- i) Acer India Pvt Ltd Vs Asstt. Commissioner (Appeal no. 2071/2016/JPR D/o 10.07.2018)
 - ii) M/s Indira Switch V/s CTO (Appeal No. 817-822/2016 date of order 18.01.2018);
 - iii) M/s Best I.T. Word (India) Pvt. Ltd. V/s CTO (Appeal No. 694-696/2016 date of order 07.06.2017); and
 - iv) M/s Samsung India Electronics Pvt. Ltd. V/s CTO (Appeal No. 509-510/2015 date of order 27.07.2017).

The judgment in the **Acer's case** has squarely dealt the same issue as in the present case, i.e. taxability of charger of the laptop when supplied alongwith the main item as supplied by the appellant in that case, and the learned Division Bench of the Tax Board has held the charger of laptop to be taxable at the residual rate as the accessories were not included in entry 28 of Schedule-IV Part A. We are privileged to have

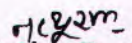
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gone through the judgement but for the reasons aforesaid, we respectfully disagree on the finding that charger of laptop as supplied with it in a composite pack, would attract the tax at the rate as per Schedule-V.

21. Since, there is an apparent disagreement between findings arrived at in the instant case and the various judgments of the learned co-ordinate benches of the Tax Board, particularly in the Acer's case (supra), it would be appropriate that the matter is decided by a Larger Bench taking into consideration all the aspects and facets of the case. The Registrar, Rajasthan Tax Board is directed to place the matter before the Hon'ble Chairman for his consideration.
22. As discussed above, the appeal nos. 255 to 258/2017 as preferred by the Revenue on the issue of penalty u/s 61 of the Act, are disallowed and the same stand finally disposed off. However, the appeal nos. 2164 to 2167/2016 as filed by the assessee, are not disposed off finally, but referred to a larger bench for deciding the wider question of law.
23. Order pronounced.



(Omkar Singh Ashiya)
Member


(Nathu Ram)
Member