

RAJASTHAN TAX BOARD, AJMER

Appeal No. 785/2016/JAIPUR

M/s Trust Marketing,
Jawahar Nagar, Jaipur

..... Appellant

Vs

Assistant Commissioner,
Anti Evasion, Rajasthan, Circle-I, Jaipur

..... Respondent

D.B.
SUNIL SHARMA, MEMBER
MANOHAR PURI, MEMBER

Present: Mr. Moti Kotwani, counsel for the Appellant

Mr. N.K. Baid, Deputy Government Advocate

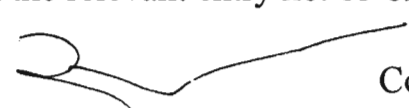
Date of judgement: 10/05/2016

JUDGMENT

An application for stay of recovery of demand consequent upon the appeal order dated Feb 17, 2016 passed by the Appellate Authority in respect of the assessment order, dated September 24, 2015 made under section 26 of the Rajasthan Vat Act, 2003 (for short, "the Act") by the Assistant Commissioner, Anti Evasion, Rajasthan, Circle-I, Jaipur, (for short, " the Assessing Authority) maintaining the levy in the assessment order under dispute of differential tax at Rs. 45,05,538/- and interest thereon at Rs. 22,73,963/-, aggregating to Rs.63,28,947/- has been filed before the Rajasthan Tax Board (for short, the "Board") under sub section (7) of the section 83 of the Act by the appellant, M/S Trust Marketing, Jawahar Nagar, Jaipur.

Aggrieved by the impugned assessment order, the appellant had challenged it before the Appellate Authority who passing an order dated Feb 17, 2016 set aside penalty in entirety to the tune of Rs.90,11,076/- but upheld the impugned tax at Rs.45,05,538/- and attendant interest at Rs. 22,73,963/-.

Arguing on behalf of the appellant, Mr. M. Kotwani, learned counsel, began arguments on the note that both the Assessing Authority and the Appellate Authority (for brevity, "the Authorities") wrongly held that the goods: mobile battery and/ or mobile charger were not part of the mobile phones under presumption that at serial no.12/28 of Part-A of the relevant entry no. 65 of the

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Schedule IV to the Act the aforesaid goods- mobile battery and charger had since not been specified therefore entailed higher tax liability than @ 5 per cent on their sale. In view of above, the Assessing Authority charged them to tax at the rate of 14.5 per cent under residuary entry of the Schedule V to the Act in the impugned assessment order which, when appealed against before the Appellate Authority, was confirmed and rather kept intact inasmuch as impugned tax and interest were concerned.

He argued that mobile phones, also known as smart phones, supplied with mobile battery/ charger, were imported and sold in the State in solo packs, with product details printed on them as regards their model numbers, maximum retail prices along with parts/ accessories etc., packed inside. He contended that the mobile batteries and chargers had not been sold separately but together with smart (mobile) phones in the solo packs. With sale price of mobile phone displayed on the packs, no separate value was further imputed to the impugned goods, that is, mobile battery and charger, in the retail sale invoices raised for customers who were sold mobile phones. Showing singularly one single sale price for the whole composite mobile pack when sold it was rightly charged to the specific VAT @ 5 per cent in keeping with rate prescribed under serial no.12 of Part A of entry no. 65 of Schedule-IV to the Act.

He further argued that going by settled principle of law that essential character of the goods in question in a composite transaction comprising different components has to be determined in reference to the main component of higher value - here, in this case smart mobile phone, the authorities below had wrongly enhanced and maintained higher tax liability on the impugned goods. In view of the above, he sought stay against recovery of the impugned tax at Rs.45,05,538/- and interest at Rs. 22,73,963/-.

He further argued that the Authorities had convoluted judgment of the Hon'ble Supreme Court in case of *State of Punjab vs. M/s Nokia India Pvt Ltd*, dated 17-12- 2014, reported in (2015) 41 Tax-Up-Date 47-SC; (2015) 77 VST 427 (SC), stretching it out of context, which in actuality exhaustively defined entry no. 60(6)g of the Punjab VAT Act from the period subsequent to it having been aligned with Central Excise Tariff Act and therefore principles laid down in the case (supra) were not applicable in the present case.



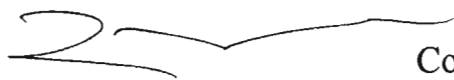
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Appearing on behalf of the respondent State, Mr. N.K. Baid, the learned Deputy Government Advocate, contended that the Assessing Authority had while endorsing the assessee's plea of selling mobile phones in the State imported in composite packs given his detailed analogical find logically adduced from the Hon'ble Supreme Court's verdict in the Nokia's case (supra) on non consanguine relationship of battery charger vis a vis mobile phone and in similar vein he put the mobile battery on the same pedestal. The appellate Authority likewise considered it an independent product which could be sold separately and unconstrictedly by choke hold of 'sale only with mobile (cellular) phone sales'.

He further argued that it was not "part" of the smart phone, but an "accessory" to it and hence exigible to tax @ 14.5 per cent for reason that cell phone battery was not covered under fiscal entry no.12 earmarked for cellular phone and other entry no. 28 which encompassed "parts of items from fiscal entry nos. 12 to 27 of 'Part A' of the Schedule 4 to the Act", nor was any other such entry existed under I, II, III, VI Schedules to the Act. After hearing the rival contentions of the parties to the aforesaid issue and going through the judgments relied upon, it comes out that crux of the stay application lying before us is whether battery pack was accessory to or part of mobile phones. As the Hon'ble Supreme Court in the case of *State of Punjab vs. M/s Nokia India Pvt Ltd* (supra) enunciated doctrine

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 subordinatedly; 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 perpetration of a felony below the crime of treason. Adj.(1) Aiding the principal design, or assisting subordinatedly the Chief Agent, as in the commission of a crime. (2) Contributory Supplemental; additional; accessory".



18. In *M/s Annapurna Carbon Industries Co. vs. 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. "

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.


Drawing profusely from the aforesaid logical exposition of the Hon'ble Supreme Court on *accessories* in the foregoing paras, the Assessing Authority, in order to buttress his claim that battery pack was an *accessory* to , not *part* of the mobile phone, put forward a theory on expandable logic that as battery pack was an independent product which could be sold separately, it counted among accessories to the cellular phone.

In the given scenario, we think it plausible to not interfere in the appellate order under conflict that confirmed the impugned assessment order to the extent of tax and interest raised in it. Even as the matter is *sub judice* in the Board, we at this stage without wishing to put a positive spin *prima facie* on the stand taken by the Revenue in the matter and without influencing merit of the impugned case presently deem it appropriate to not interfere by granting an injunction against the recovery of stay in respect of demand pertaining to the aforesaid tax and interest under consideration. Therefore, the aforesaid impugned stay application is rejected.

Judgment pronounced.



(MANOHAR PURI)
MEMBER



(SUNIL SHARMA)
MEMBER