

State Of Punjab & Ors vs Nokia India Pvt Ltd on 17 December, 2014

Equivalent citations: AIR 2015 SUPREME COURT 1068, 2015 AIR SCW 611, (2015) 1 MAD LJ 124, 2014 (16) SCC 410, (2015) 1 ALLMR 984 (SC), (2015) 1 RECCIVR 569, (2015) 1 WLC(SC)CVL 367, (2015) 110 ALL LR 52, 2015 (149) AIC (SOC) 26 (SC), 2015 (1) KLT SN 82 (SC)

Bench: Madan B. Lokur, Sudhansu Jyoti Mukhopadhaya

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 11486-11487 OF 2014
(Arising out of SLP (C) Nos.30398-30399 of 2011)

STATE OF PUNJAB & ORS.

... APPELLANTS

VERSUS

NOKIA INDIA PVT. LTD.

... RESPONDENT

J U D G M E N T

Sudhansu Jyoti Mukhopadhaya, J.

Leave granted.

2. These appeals have been preferred by the appellants- State of Punjab and others against the impugned orders dated 17th November, 2010 passed by the High Court of Punjab and Haryana at Chandigarh. By the impugned orders the Division Bench of the High court allowed the appeals preferred by the respondent-assessee, and held that cell phone battery charger is sold as composite package along with cell phone, and hence said charger cannot be excluded from the Entry for concessional rate of tax which applies to cell phones and parts thereof.

3. The factual matrix of the case is as follows:

The respondent-M/s. Nokia India Pvt. Ltd. (hereinafter referred to as the "Company") is a dealer registered under the Punjab Value Added Tax Act, 2005

(hereinafter referred to as the "Act") in the District Mohali and is doing business of sale of cell phones and their accessories. During the year 2005-06, the Company had made sales of 1,07,2679 pieces of cell phones with battery chargers and had paid tax at the rate of 4% on the sale value of battery chargers, the rate at which the tax on the sale of cell phone was paid. The value of the each of the battery charger if separately taken was to be Rs.120/- per piece as quoted by the respondent-Company itself. It comes to Rs.12,87,21,480/-. The scrutiny proceedings were initiated under Section 26 of the Act, 2005 read with Rules 36 and 43 of the Punjab Value Added Tax Rules, 2005 by issuing notice to the respondent separately for the Assessment Years 2005-06 and 2006-07. The Assessing Authority had held that the battery charger was an accessory chargeable to tax at the rate of 12.5%. The difference of 8.5% was calculated and it came to Rs.1,09,41,325/-

. Interest under Section 32(1) was charged on the said amount amounting to Rs.21,25,491/-. Further penalty under Section 53 of the Act at the rate of 2% per month was imposed amounting to Rs.85,01,964/- The total demand for the assessment year 2005-06 was raised to Rs.2,15,68,780/-.

4. For the year 2006-07, the number of battery chargers sold were taken to be 1807725 pieces, the value at the rate of Rs.120/- per piece came to Rs.21,69,27,000/-. Differential amount of tax at the rate of Rs.8.5% was calculated to be Rs.1,84,38,795/-. Interest as per Section 32(1) of the Act was charged which came to Rs.25,24,175/-. Further, penalty under Section 53 of the Act at the rate of 2% per month was calculated which came to Rs.1,00,96,750/- and total demand raised vide order of Assessing Authority for that year had been Rs.3,10,59,720/-.

5. Respondent-Company filed reply on 26th November, 2008, 24th December, 2008 and 9th January, 2009, inter alia, stating that the product was being sold as mobile/cellular phone under a single solo pack unit and was covered under Entry No.60 of Schedule 'B' of the Act and that no separate amount for battery charger was being claimed from the customers, and that only amount charged was for handsets. It was also stated by the respondent that for subsequent sale of the battery charger and the battery in the State of Punjab, Tax/VAT at the rate of 12.5% was being deposited. The respondent stated that the battery charger is an accessory to the main product that is mobile phone.

6. The Assessing Authority vide detailed common order dated 2nd March 2009 held that the battery charger being a separate item was liable to be taxed at general rate i.e. 12.5% and not at concessional rate applicable to the cell phones inter alia on the premise that the respondents were selling more than one product which were exigible in different rate of tax in a single pack and had themselves admitted the battery charger as a separate commodity was liable to payment of tax at the rate of 12.5% applicable to the goods in residuary Schedule 'F' to the Act. The Assessing Authority further observed that even according to Entry 60 of Schedule 'B', the product included is only the cellular phone and not accessories thereof.

7. The respondent filed Appeal Nos. 804 and 805/2009-10 under Section 62(1) of the Act before the Deputy Excise & Taxation Commissioner(Appeals), Patiala Division, Patiala, inter alia, challenging

the above said order dated 2nd March, 2009.

The Dy. Excise & Taxation Commissioner (Appeals), Patiala vide judgment and order dated 26th August, 2009 dismissed both the appeals. The respondent being aggrieved by the above filed Appeal Nos.656-657 of 2009 under Section 63(1) of the Act before the Value Added Tax, Tribunal, Chandigarh, Punjab. The Tribunal by a detailed order dated 11th February, 2010 dismissed both the appeals, inter alia, observing that the battery charger is not a part of the cell phone. The Tribunal further held that the penalty under Section 53 of the Act should not have been imposed and thus set aside the same viz. Rs.85,01,964/- for the year 2005-06 and Rs.1,00,96,750/- for the year 2006-07.

8. The respondent, against the above concurrent finding filed VAT Appeal Nos.54 & 55 of 2010 (O&M) before the High Court of Punjab and Haryana at Chandigarh. By the impugned orders dated 17th November, 2010, the Division Bench of the High Court allowed the appeals holding that the battery charger is a part of the composite package of cell phone.

9. Similar pleas as taken before the High Court have been taken by both the parties before this Court.

Learned counsel appearing on behalf of the respondent demonstrated the composite package of cell phone, cell phone and battery charger and some other accessories like head phone.

10. The contention of the respondent had been that battery charger not being independently sold, was sold with the cell phone in same packing and hence tax chargeable was at the rate of 4% and proper tax had been paid and, therefore, there was no good ground to charge tax at the rate of 12.5% on sale of those battery chargers which are free with the cell phone in the composite package.

11. On the other hand, according to the counsel for the appellant-State a battery charger is not a part of the cell phone but merely an accessory thereof even as per the respondents themselves, who had separately paid tax at the rate of 12.5% on the battery chargers sold separately. According to him, the battery charges are not covered under Entry 60(6)(g) in Schedule 'B' of the Act and was thus liable to be taxed at the rate of 12.5% on its value under Schedule 'F' of the Act which covers all residuary items not falling in any of the classifications of other Schedules of the Act.

12. We have heard rival contentions made on behalf of the parties and perused the record.

Schedule 'B' of the Act contains list of goods taxable at the rate of 4%. Cell phone is mentioned in the said schedule and it finds further place at Serial No.6(g) under Entry 60 and is thereby liable to be charged at the rate of 4%.

13. According to the counsel for the respondent, charger is an integral part of the cell phone and the cell phone cannot be operated without the charger and when any person comes for cell phone, he purchases the cell phone and then automatically takes away the charger for which no separate money is charged. However, it is admitted that whenever Company sells chargers separately then 12.5% tax is charged which is applicable to goods in residuary Schedule 'F' of Act.

14. On behalf of the State it was rightly argued that when Entry 60(6)(g) of Schedule 'B' of the Act does not mention accessories for the purpose of taxing the item/product at the rate of 4%, they need to be charged at 12.5% as per Schedule 'F'. It was contended that the battery chargers are not covered under Entry 60(6)(g) and even otherwise there is no mention of the charger in HSN Code 8525.20.17 under the Excise Act, and therefore, charger is liable to be taxed at the rate of 12.5%.

15. Sub-sub heading code 8525 and tariff no.8525.20.17 of the Central Excise Duty Act, is as under:

|Chapter 85 |Sub-heading Code |Sub-sub heading |Tariff | | 8525 |Code 8525.20.17
|No.8525.20.17 | |Electrical |Transmission |"Transmission |Cellular Telephones|
|machinery and |apparatus for |apparatus | | equipment and parts|radio-telephony,
incorporating		thereof,	radio-broadcasting	reception apparatus								
radio-telegraphs	or television,			sound recorders and	whether or not							
reproducers and	incorp.			parts and			accessories of such			articles.		
'Cellular telephone' is in schedule B at Entry No.60(6)(g) vide HSN Code												
No.8525.20.17. The Tariff No.8525.20.17 only relates to cellular telephone and not
the accessories. The Schedule 'B' does not indicate that the cellular phone includes
the accessories like the chargers either in the HSN Code or by elaborating in words.

16. The Assessing Authority, Appellate Authority and the Tribunal rightly held that the battery charger is not a part of the mobile/cell phone. If the charger was a part of cell phone, then cell phone could not have been operated without using the battery charger. But in reality, it is not required at the time of operation. Further, the battery in the cell phone can be charged directly from the other means also like laptop without employing the battery charger, implying thereby, that it is nothing but an accessory to the mobile phone. The Tribunal noticed that as per the information available on the website of Nokia, the Company has invariably put the mobile battery charger in the category of an accessory which means that in the common parlance also, the mobile battery charger is understood as an accessory. It has also been noticed by the Tribunal that a Nokia make battery charger is compatible to many models of Nokia mobile phones and also many models of Nokia make battery chargers which are compatible to a particular model of Nokia mobile phone, imparting various levels of effectiveness and convenience to the users.

17. Learned counsel for the respondent referred to General Rules for interpretation of the First Schedule of the Import Tariff under the Customs Tariff Act, 1975. The classification of the goods in the Schedule for the purpose of Rule 3(b) in the general rules for interpretation of import tariff reads as follows:

"3(b) mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material of component which gives them their essential character, insofar as this criterion is applicable."

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 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 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".

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.

20. In view of the finding recorded above, we have no other option but to set aside the impugned orders dated 17th November, 2010 in VAT Appeal Nos.54 & 55 (O&M) of 2010 passed by the High Court of Punjab and Haryana at Chandigarh. The order passed by the Tribunal is affirmed. The appeals are allowed. No costs.

.....J. [SUDHANSU JYOTI MUKHOPADHAYA]J. [MADAN B. LOKUR] NEW DELHI;

DECEMBER 17, 2014.