

Whether charger sold with mobile phone as composite package be subject to different rate of VAT – Principle laid down by Punjab & Haryana High court



Presentation by

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Facts of the case



- û Case in question is Nokia India Private Limited vs State of Punjab (VAT Appeal 54 of 2010)
- û The dealer was selling mobile phone alongwith charger as composite package.
- û While mobile phones are taxable at 4% VAT rate, the charger was subjected to a higher rate of 12.5% VAT (considering it was covered under the residuary category).
- û The dealer applied rate of 4% on entire consideration on the argument that battery charger was sold in a composite package along with cell phone and compared to the price of cell phone, cost of battery charger was insignificant. Also, the price of battery chargers was included in the sale price of the cell phones. Being part of composite package, the battery chargers could not be taxed at separate rate except when sold separately.

Issue for consideration



- û Department charged 12.5% tax on the chargers contending that merely because chargers are put in the box in which cell phone is sold and separate price for the charger is not shown in the box or not charged in the invoice, that does not mean that the charger will be taxed at the same rate of tax as the cell phone is taxed.
- û Department relied upon *Sprint R.P.G. India Ltd. v. Commissioner of Customs-I, Delhi*, 2000 (116) ELT 6 (SC) and submitted that essential character of the goods in question in a composite transaction comprising of different components has to be determined with reference to main component of higher value.
- û The question for consideration is whether battery charger sold in a package along with the cell phone without any extra charges is covered by Entry of cell phone to which concessional rate of tax was applicable.

Observations of High court

The High court while upholding the contentions of the dealer observed as follows

- Ū When cell phone is sold in a composite package without any extra charges for the battery charger, the battery charger is a part of cell phone.
- Ū Mere fact that battery charger was not affixed to the cell phone will not mean that it is different item.
- Ū The Entry in question cannot be read as excluding battery charger which is necessary for use of the cell phone.
- Ū Compared to the value of cell phone, value of the charger is insignificant. Cell phone cannot be used without the charger.

The court also distinguished the cases pleaded by department



Cases distinguished by high court



Name of Decision	Held	Distinguished by high court
State of Uttar Pradesh and another v. Kores (India) Ltd. (SC) [1977] 039 STC 0008	Holding that carbon paper and ribbon were accessories of typewriter and not part thereof.	The plea of the assessee was that the items were sold separately and that carbon papers and ribbon were taxable at lower rate. The revenue wanted to assess the carbon papers, ribbon and other items at the same rate at which typewriter was taxed which plea was rejected by the Hon'ble Supreme Court.
I.A.S. Products v. Commissioner, Commercial Tax, Uttarakhand at Dehradun [2010] 29 VST 507 (Uttara)	Holding that LPG Regulator was accessory of LPG Cylinder and not part thereof.	There is nothing to show that regulator sold was part of composite package without any extra charges along with cylinder.
V. Govindarajan & Brother v. The Government of Pondicherry (Madras) [1977] 040 STC 0169	Holding that leather case and battery cells of transistor were not part thereof but accessories.	There is nothing to show that sale of battery cells was part of composite package along with the Transistors

Concluding remarks

- û Distinction needs to be made between “part of goods” and “accessories” while determination of tax on an item
- û If it is “part of goods”, then tax shall be at the rate applicable for the main item. However, if it is an accessory, then the issue for determination is whether separate consideration is being charged for same or not.
- û If separate consideration is charged, then it shall be chargeable at that rate.
- û If separate consideration is not charged, then materiality of the item in relation to the main product needs to be seen.
 - § Where it is not material, then rate applicable for main product shall be considered –
Even high court considered the said plea while accepting dealer’s contentions
 - § Where it appears to be material, then tax needs to be charged at a rate which is higher of the two (i.e. that applicable for main item or the accessory). Ideally, in that case, it would be better to have separate consideration be defined for the same.

Thank You

