

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

Ministry of Finance
Department of Revenue
State Taxes Division

New Delhi, the 30th November, 2015OFFICE 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 States 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

Tele: 011-23092419

Email-mahendra.nath67@nic.in

To

All State, Commercial Tax Commissioners

S.O (Policy)
LW
9.12.2015

A
BPO
9/12/15

DECLINATED
9.12.15



Pankaj Mohindroo
National President

Ref: ICA/ MOF/ Accessories' Classification / 2015/ 187
September 23, 2015



Mr. Arun Jaitley
Hon. Minister for Finance
Government of India
North Block
New Delhi-110001

h
Dy. No. 202946-RS
Date 28/9/15

We may give instructions to states based on an excise duty commission

Sub: - Accessories' Classification with the main Item when the two are sold in Single pack in State VAT Jurisdictions- Multiple Interpretations by States and Retrospective levy in light of Supreme Court Judgement- Uncertainty in the minds of Investors in Mobile and IT Industry - Suggestions for Advisory to State Governments in light of Customs & Excise Rules in Accessory Classification for Taxation purposes.

Chit
RS
Jst

Dear Mr. Jaitley,

ICA is partnering with both the Central as well as State Governments to promote the establishment of the domestic manufacturing industry in the electronics hardware sector. The Government has announced Digital India initiative, MSIPS in the NPE to push manufacturing. The recent differential duty initiative to protect domestic manufacturing from zero duty imports is yielding the desired result.

AST

Under the dedicated and committed team of DeitY with full support from Department of Revenue, FDI and domestic investors are zeroing in on India for investments in mobile and tablet manufacturing.

b
2015

In this scenario, we draw your attention to the Supreme Court Judgement on Chargers bundled with Mobiles as Accessories, which has created great uncertainty in the minds of investors. Some State Governments have taken varying interpretations to levy VAT on Chargers when packed with the mobile in a single box as an accessory. Huge demands for revenue for recoveries from back date are being made in many cases. Some States have, however, have amended the law to make it industry and trade friendly (for example: Karnataka). States, where the industry is facing the huge demands on a retrospective basis are: Rajasthan, Uttar Pradesh, Bihar, Kerala, Karnataka (only retrospective, prospectively they have amended), Punjab and Himachal Pradesh.

USGS 7-M
As put up
2/15
6/15
Govt

The highlight of the case and its implication with suggestions are given below:

Indian Cellular Association

207 Panchsanga Bldg 4 12, Barakhamba Road, Connaught Place, New Delhi - 110001, India
Mobile: +91 9811922022, Tel: +91 11 66303663 Fax: +91 11 66303664
Email: ica@ica-ind.org Website: www.ica-ind.org



Analysis of Supreme Court Ruling

The matter was first raised by Punjab VAT Administration at a junior level. The case went to the Tribunal which ruled in favour of the Government. The High Court ruled against the VAT Administration and Tribunal to say that mobile cannot use without charger.

The Hon'ble Apex Court in the case of **State of Punjab Vs. Nokia India Pvt. Ltd.** (decided on 17.12.2014) after considering the relevant entry of cell phones under the Punjab Value Added Tax Act, 2005 held that cell phone charger is an accessory to cell phone and not a part of cell phone. This matter was agitated further in a review petition in the Supreme Court to clarify mobile chargers are intrinsic to mobile handsets and the functionality of the mobile handset is very much dependent upon the performance of Chargers. However, the reference did not produce any new result.

The Supreme Court has taken the position that a Charger is not a Part of a mobile but an Accessory. We agree with the Supreme Court order. Nowhere has the Supreme Court suggested that VAT authorities should start taxing the Chargers separately. It is obvious that when bundled with the main item, Charger should be considered as a single unit with the Mobile phone.

Issue at Hand

Industry is extremely upset on the perverse interpretation of the Hon. Supreme Court order, its retrospective application and tax at multiple stages. The set rules on accessory classification with the main item followed by the Central Government should be followed the states.

Our request

We urge the Central Government to coordinate between the State Governments to issue general clarification on accessories. Customs and Excise Rules which say accessories are part of the main item. The Customs Accessories (Condition) Rules, 1963 notified by Notification No. 18-Cus dated 23.1.1963, specifically provides that accessories compulsorily supplied free with an article attract the same rate of duty, which is applicable on the imported article. Rule 2 of Accessories (Condition) Rules, 1963 is enclosed herewith for your kind consideration.

The words 'and accessories thereof, when sold with cell phone in a single solo pack unit' can be added after the words 'mobile parts' occurring in the VAT legislations with retrospective effect. Thus the charger when sold with cell phone in a single solo unit pack will attract the same rate of tax as applicable to the cell phone.

(3)



States can also be well advised to introduce an Accessories (Condition Rules), similar to the 'Accessories (Condition) Rules, 1963.

The States may be further advised to amend VAT Schedules with provision that actions done till now will be deemed not to be done. This will protect industry on recoveries of past VAT not collected/ paid. In many cases, multiple demands for the same transaction are being raised in entire supply chain. This is unjust.

Importance of a New View on Accessories:

It is relevant to point out that the amendment as prayed for in the preceding paragraph is of utmost important and relevant not just for the cell phone but also for all other consumer products such as digital cameras, laptops, computers, printers, music system etc., where parts and accessories such as battery, chargers etc. are sold in a single solo pack unit along with such goods. Therefore, this amendment is a need of the entire range of consumer products especially electronic items.

In view of the aforesaid facts and circumstances explained above, it is requested that the amendments requested above may be carried out, and/or any other relief may be provided, which in the opinion of the Government is justified and proper.

Thanking you for your kind consideration of our Prayer for relief.

With my best regards,

(Pankaj Mohindroo)

Encl:

1. Text of Accessories notification
2. Text of Supreme Court judgement on Chargers classified as accessories.

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 may be 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.

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 Mukhopadhyaya, 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

Handwritten notes:
Sudhansu Jyoti Mukhopadhyaya, J.
sd Rohit
01/11/15

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 25th 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. 284 and 305/2009-10 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.1,00,95,750/- 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 8525	Sub-sub heading Code 8525.20.17	Tariff No.8525.20.17
Electrical machinery and equipment and parts thereof, radio-telegraphs, sound recorders and reproducers and parts and accessories of such articles.	Transmission apparatus for radio-telephony, radio-broadcasting or television, whether or not incorp.	Transmission apparatus incorporating reception apparatus	Cellular Telephones

'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]

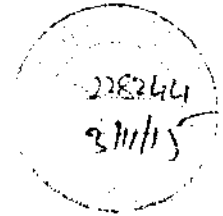
NEW DELHI;
DECEMBER 17, 2014.

Receipt No : 11938/2015/CRU Section

Subject: Accessories Classification - Perverse interpretation by some State Governments
To: rsecy@nic.in
Cc: chmn-cbec@nic.in, alok.shukla@nic.in, secretary@deity.gov.in, ajay@deity.gov.in, ICA -Pankaj Mohindroo <pankajm@ica-ind.org>, Bijesh Kumar Roul <bijeshk@ica-ind.org>

Date: 10/28/15 04:39 PM
From: ICA <ica@ica-ind.org>

187 Annex Supreme Court Judgment Nokia India.pdf (196kB)
187 Leter to Mr Arun Jaitley, MOF Reg. Accessories... (1.3MB)



Ref: ICA/ MOF/AccessoriesClassif'n/ 2015/ 222
October 28, 2015

Dr Hasmukh Adhia
Secretary
Department of Revenue
Ministry of Finance, Government of India
128-A/North Block,
New Delhi - 110001

we may issue clarification of all states for share tax division
3/11

Accessories Classification - Perverse interpretation by some State Governments on a point of Hon'ble Supreme Court Judgment - The Single biggest issue confronting the industry today

Dear Dr Adhia,

DSST on 10/11/15
REC 4/11
USCSTM
SECRET

On behalf of the mobile handset industry, please accept our sincere appreciation on the consultative meeting held on 27th October, 2015. We are motivated after witnessing the serious intent of the Government to promote the industry for the welfare of our nation.

Please accept our sincere thanks for the kind assurance to support our case for improving the ease of doing business in light of perverse actions by some State Governments in view of the judgment of Hon'ble Apex Court in the case of **State of Punjab Vs. Nokia India Pvt. Ltd.** (decided on 17.12.2014).

A copy of our letter # Ref: ICA/ MOCIT/ Accessories' Classification / 2015/ 187 September 23, 2015 addressed to the Hon'ble Minister for Finance, Government of India is enclosed for your ready reference. We reproduce here below some of the facts of this case for your kind consideration:

The Supreme Court has taken the position that a Charger is not a Part of a mobile but an Accessory. **We agree with the Supreme Court order.** Nowhere has the Supreme Court suggested that VAT authorities should start taxing the Chargers separately. It is obvious that when bundled with the main item, Charger should be considered as a single unit with the Mobile phone.

Industry is extremely upset on the perverse interpretation of the Hon. Supreme Court order, its retrospective application and tax at multiple stages. The set rules on accessory classification with the main item followed by the Central Government should be followed the states.

As discussed, the Department of Revenue can coordinate with the State Governments to issue a general clarification on Accessories, based on the Customs and Excise rules which say 'accessories are part of the main item'.

The Customs Accessories (Condition) Rules, 1963 notified by Notification No. 18-Cus dated 23.1.1963, specifically provides that accessories compulsorily supplied free with an article attract the same rate of duty, which is applicable on the imported article. Rule 2 of Accessories (Condition) Rules, 1963 is enclosed herewith for your kind consideration.

The words 'and accessories thereof, when sold with cell phone in a single solo pack unit' can be added after the words 'mobile parts'

Receipt No : 11938/2015/CRU Section

occurring in the VAT legislations with retrospective effect. Thus the charger when sold with cell phone in a single solo unit pack will attract the same rate of tax as applicable to the cell phone.

States can also be well advised to introduce an Accessories (Condition Rules), similar to the 'Accessories (Condition) Rules, 1963.

The States may be further advised to amend VAT Schedules with provision that actions done till now will be deemed not to be done. This will protect industry on recoveries of past VAT not collected/ paid. In many cases, multiple demands for the same transaction are being raised in entire supply chain. This is unjust.

Importance of a New View on Accessories:

It is relevant to point out that the amendment as prayed for in the preceding paragraph is of utmost important and relevant not just for the cell phone but also for all other consumer products such as digital cameras, laptops, computers, printers, music system etc., where parts and accessories such as battery, chargers etc. are sold in a single solo pack unit along with such goods. Therefore, this amendment is a need of the entire range of consumer products especially electronic items.

As advised in the meeting, this is currently a very serious issue impacting the entire distribution chain in the mobile industry – from manufacturers to brand owners to distributors and even retailers. **It is having a debilitating effect on the positive sentiment which is building around 'Make in India' 'Digital India'.**

We once again thank you for your consideration and support.

With my best regards,

Pankaj Mohindroo

National President

Indian Cellular Association

207, Kanchenjunga Building | 18, Barakhamba Road | Connaught Place | New Delhi-110001

Tel: +91-11-66303663, +91-11-41520586 | Fax: +91-11-66303664

Mobile: +91-981-00-22022, +91 9716622022

E Mail: pankajm@ica-ind.org | Website: www.ica-ind.org

Encl:

Copy of letter dated 23-9-2015 along with annexure.

Copy to:

Chairman, CBEC

JS-TRU

Secretary -DeitY

Dr Ajay Kumar, Additional Secretary, DeitY

SECRET (VAT)