IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.11165 of 2015 (O&M)
Date of decision: 2.11.2015

Samsung India Electronics Pvt. Limited
……Petitioner

State of Punjab and another
…..Respondents

CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Balbir Singh, Sr. advocate with Mr. Surjeet Bhadu, Advocate and Mr. A.R.Madhav Rao, Advocate for the petitioner.

Mr. Jagmohan Bansal, Addl.A.G.Punjab.

Ajay Kumar Mittal,J.

<u>CM No.12627 of 2015</u>

1. Rejoinder is taken on record. CM stands disposed of.

<u>CWP No.11165 of 2015</u>

2. The petitioner prays for quashing the impugned order dated 4.5.2015, Annexure P.8 raising tax demand of ₹ 1,93,05,198/- from it.

3. A few facts relevant for the decision of the controversy involved as narrated in the petition may be noticed. The petitioner – Samsung (India) Electronics Pvt. Limited is manufacturer and seller of consumer electronics, IT and telecom products in the Indian market. It is a registered dealer under the provisions of the Punjab Value Added Tax Act, 2005 (in short, Punjab VAT Act"). It is engaged inter alia in selling of mobile phones and accessories. In case of sale of mobile phones, the petitioner alongwith the mobile phones also packages and supplies mobile chargers, batteries, earphones, data cables, etc. in one single package, so as to make it one composite box put up for retail sale. The mobile phone box contains battery charger and VAT is discharged at the time of sale of the box at the rate of 5.5% as per Entry No. 60(6)(g) of Schedule B of the Punjab VAT Act. The invoice shows that the VAT is charged on the price mentioned on the box which contains mobile phone alongwith the battery charger, data cable etc. Notice of assessment was issued to the petitioner for appearance on 21.5.2014. However, the assessment proceeding were kept pending till the decision of the Apex Court in State of Punjab and others vs. Nokia India Pvt. Limited, Civil Appeal Nos.11486-11487 of 2014. On 21.5.2014, the petitioner through its authorized representative appeared before respondent No.2 and filed its reply. In ***Nokia India Pvt. Limited's*** case (supra), it was held by the Apex Court vide order dated 17.12.2014 that mobile phone charger was an accessory to the mobile phone and it was not a part of the mobile phone. The battery charger was separate item and was distinguishable from mobile phones and therefore, it was liable to be taxed as per the residuary entry of the Punjab VAT Act. Respondent No.2 issued

letter dated 8.1.2015 to the petitioner to appear before it on 15.1.2015 alongwith certain documents. The petitioner submitted written submissions. Vide order dated 4.5.2015, Annexure P.8, respondent No.2 relying on judgment of the Apex Court in ***Nokia India Pvt. Limited's*** case (supra) concluded that the battery charger was a separate item and was distinguishable from mobile phones and therefore, it was liable to be taxed as per the residuary entry of the Punjab VAT Act. Accordingly, tax demand of ₹ 1,93,05,198/- was fastened on the petitioner. Hence the instant writ petition.

4. Reply by way of short affidavit has been filed on behalf of the respondents by Shri Shalinder Singh, Designated Officer cum Excise and Taxation Officer, Ludhiana II. It has been inter alia stated therein that the issue has already been settled by the Apex Court in ***Nokia India Pvt. Limited's*** case (supra). Further, the petitioner has an efficacious statutory remedy of appeal under Section 62 of the Punjab VAT Act before the Deputy Excise and Taxation Commissioner (Appeals); under Section 63 of the Act before the Tribunal and under Section 68 of the Act before this Court. Without exhausting the statutory remedies available to the petitioner under the above provisions, it has no right to invoke the extra ordinary jurisdiction of this court under Article 226 of the Constitution of India. It has been further stated that the assessment order was passed under Section 29(2) of the Punjab VAT Act on 4.5.2015 in respect of the assessment year 2010-11. The petitioner filed the requisite returns. During scrutiny, it was found that the returns were not correctly filed. Notice was issued to the petitioner under section 29(2) of the Punjab VAT Act on 5.5.2014. The petitioner was

directed to produce the account books, balance sheet etc. In the meantime, the Apex Court in ***Nokia India Pvt. Limited's*** case (supra) decided identical issue vide order dated 17.12.2014. The assessment proceedings in the case of the petitioner were again taken up by issuing notice to it. On examination of the papers, it was found that sale of 7,81,008 mobile phones to the value of ₹ 269,21,55,517.92 had been made. The petitioner claimed that the mobile phone chargers and other accessories sold by it were not to be charged separately on a separate rate of tax as was applicable under the Punjab VAT Act. The explanation on being found to be not satisfactory, the assessment was framed. It has been further stated that Schedule B of Punjab VAT Act contains the list of goods taxable at the rate of 4%. Cell Phone (Mobile Phone) is mentioned in the said Schedule at Sr.No.6(g) under Entry 60 thereof and is liable to be charged at the rate of 4%. The said entry does not cover 'accessories' for the purpose of taxing the item at 4% and rather the same are required to be charged at the rate of 12.5% in accordance with Schedule F. The Apex Court while dealing with those very entries categorically held in ***Nokia India Pvt. Limited's*** case (supra) that accessories of mobile phone were not covered under Schedule B. The provisions of Section 29(4) of the Punjab VAT Act Act alongwith proviso and explanations had been introduced w.e.f 15.11.2013 whereby for any assessment to be made under section 29(2) of the Punjab VAT Act, the period of limitation has been prescribed six years after the date when the annual statement is filed or due to be filed whichever is later. In the present case, the assessment order dated 4.5.2015 is within time. Further this Court in CWP No.21811 of 2014, ***M/s Amrit Banaspati Company Limited vs.***

State of Punjab and others decided on 7.8.2015 upheld the validity of the provisions of the amended Section 29(4) of the Punjab VAT Act holding that amendment was retrospective. On these premises, prayer for dismissal of the petition has been made.

5. After hearing learned counsel for the parties, we find that the issue has already been decided against the petitioner by the Apex Court in ***Nokia India Pvt. Limited's*** case (supra) wherein it has been held as under:-

> "**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.
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> **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."

Learned counsel for the petitioner was unable to distinguish the judgment passed by the Apex Court. Further, the issue with regard to the vires of Section 29(4) of the Act stands concluded against the petitioner by judgment of this court dated 7.8.2015 rendered in ***M/s Amrit Banaspati Company Limited's*** case (supra).

6. In view of the above, no ground for interference is made out with the impugned order. Consequently, finding no merit in the petition, the same is hereby dismissed.

(Ajay Kumar Mittal)
Judge

November 2, 2015
'gs'

(Ramendra Jain)
Judge