

The Joint Commissioner Of Vs. M/s Bharthi Airtel Services Ltd

The Joint Commissioner Of Vs. M/s Bharthi Airtel Services Ltd

SooperKanoon Citation : sooperkanoon.com/1234417

Court : Karnataka

Decided On : Feb-10-2023

Judge : P.S.Dinesh Kumar and T G Shivashankare Gowda

Appeal No. : STRP 15/2022

Appellant : The Joint Commissioner Of

Respondent : M/s Bharthi Airtel Services Ltd

Judgement :

STRP No.08 OF 2022 AND CONNECTED MATTERS¹IN THE HIGH COURT OF KARNATAKA AT BENGALURU DATED THIS THE¹⁰H DAY OF FEBRUARY, 2023 PRESENT THE HONBLE MR. JUSTICE P.S.DINESH KUMAR R AND THE HONBLE MR. JUSTICE T.G.SHIVASHANKARE GOWDA STRP No.8 OF2022C/W STRP No.9 OF 2022 STRP No.10 OF 2022 STRP No.11 OF2022 STRP No.14 OF 2022 STRP No.15 OF2022 STRP No.16 OF 2022 STRP No.17 OF2022 STRP No.18 OF 2022 STRP No.19 OF2022 STRP No.20 OF 2022 STRP No.21 OF2022 STRP No.22 OF 2022 STRP No.23 OF2022 STRP No.24 OF 2022 STRP No.25 OF2022 STRP No.26 OF 2022 STRP No.35 OF2022 STRP No.37 OF 2022 STRP No.38 OF2022 STRP No.39 OF 2022 STRP No.40 OF2022 STRP No.43 OF 2022 STRP No.44 OF2022 STRP No.49 OF 2022 STRP No.51 OF2022 STRP No.53 OF 2022 IN STRP No.8 OF 2022 BETWEEN :

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT31), DVO-3 SHANTHINAGAR BENGALURU-560 027.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-3) 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING, K.H.ROAD STRP No.08 OF 2022 AND CONNECTED MATTERS2SHANTHINAGAR BENGALURU-27 PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. INTEX TECHNOLOGIES INDIA LTD. NO.2/23, NEW RAJ BUILDING N.R.ROAD BENGALURU-560 002. RESPONDENT REP. BY ITS MANAGER (BY SHRI. S.GANESH, ADVOCATE) THIS STRP IS FILED UNDER SECTION651) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED1003.2021 PASSED IN STA NOS.88 TO912018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEALS AND SETTING ASIDE THE

ORDER

DATED2212.2017 PASSED IN VAT.AP34TO3716-17 (A.Y.2010-11 TO201314) ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES APPEALS-3, BENGALURU, DISMISSING THE APPEALS FILED UNDER SECTION621) OF THE KVAT ACT, 2003 AGAINST THE RE-ASSESSMENT

ORDER

DATED3006.2016 PASSED BY DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-3.1) DVO-3 BENGALURU, UNDER SECTION691) OF THE KVAT ACT 2003 FOR THE YEAR201011 TO201314. IN STRP No.9 OF 2022 BETWEEN :

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT AND RECOVERY - 6.9) BENGALURU-560 058.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-6) 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING, K.H.ROAD SHANTHINAGAR BENGALURU-27 PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) STRP No.08 OF 2022 AND CONNECTED MATTERS³AND: M/s. SPICE RETAIL LTD. SHOP NO.4, SITE NO.10 WARD NO.13, S.M.ROAD DASARAHALLI (TUMKUR ROAD) BENGALURU-560 057 REP BY ITS MANAGER RESPONDENT (VIDE

ORDER

DATED1708.2022 IN STRP No.8/2022 SERVICE TO RESPONDENT IS HELD SUFFICIENT) THIS STRP IS FILED UNDER SECTION651) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED1003.2021 PASSED IN STA185TO1872017 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEALS AND SETTING ASIDE THE

ORDER

DATED2701.2017 PASSED IN VAT.AP4416-17, VAT AP NO.45/16-17 AND VAT AP4616-17 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES APPEALS-6, BENGALURU, DISMISSING THE APPEALS FILED AGAINST THE RE-ASSESSMENT

ORDER

DATED1307.2016 AND1407.2016 PASSED BY DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT- AND RECOVERY⁶⁹) DVO-6, BENGALURU U/S391) OF THE ACT AND DIRECTED THE AA TO RE COMPUTE THE TAX LIABILITY AND ISSUE REVISED DEMAND NOTICE FOR THE TAX PERIODS APRIL 2010 TO MARCH2011 APRIL 2012 TO MARCH 2013 AND APRIL 2013 TO MARCH2014 RESPECTIVELY. IN STRP No.10 OF 2022 BETWEEN :

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-1) 2ND FLOOR, TTMC

'B' BLOCK BMTc BUILDING, K.H.ROAD SHANTHINAGAR BENGALURU-560 027 2. THE COMMERCIAL TAX OFFICER (INTERNAL AUDIT AND INSPECTION)-1 DVO-1, BENGALURU-27 STRP No.08 OF 2022 AND CONNECTED MATTERS⁴³. THE STATE REPRESENTATIVE SALE TAX APPELLATE TRIBUNAL MULTISTORIED BUILDING DR. B.R.AMBEDKAR VEEDHI BENGALURU-560 001. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. UNIVERSAL TELECOMMUNICATIONS (INDIA) PVT. LTD. NO.1 & 2, 3RD MAIN ROAD SESHADRIPURAM BENGALURU-560 020 REP BY SHRI. G.S. RAMAMURTHY DIRECTOR RESPONDENT (SHRI. V.S. HARISH, ADVOCATE) THIS STRP IS FILED UNDER SECTION⁶⁵¹) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED^{1003.2021} PASSED IN STA¹³⁴²⁰¹⁶ ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL AND AGAINST THE IMPUGNED

ORDER

S DATED^{3011.2015} PASSED IN KVAT AT.NO.84/2015-16, ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS-1) BENGALURU, DISMISSING THE APPEAL AND UPHOLDING THE RE-ASSESSMENT

ORDER

DATED^{0307.2015} PASSED BY THE COMMERCIAL TAX OFFICER, DVO-1, BENGALURU, FILED UNDER SECTION³⁹²) R/S³⁶¹)/37 OF KARNATAKA VALUE ADDED TAX ACT²⁰⁰³ FOR TAX PERIOD^{0104.2008} TO^{3103.2009}. IN STRP No.11 OF 2022 BETWEEN :

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT - 3.3), 2ND FLOOR TTMC 'B' BLOCK, BMTc BUILDING K.H.ROAD, SHANTHINAGAR BENGALURU-27. STRP No.08 OF 2022 AND CONNECTED MATTERS⁵². THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-3) 2ND FLOOR, TTMC

'B' BLOCK BMTC BUILDING, K.H.ROAD SHANTHINAGAR BENGALURU-27
PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. CELLUCOM RETAIL INDIA PVT. LTD.
REPRESENTED BY SHRI. MUKESH ANAND NO.436, 20TH MAIN ROAD I
BLOCK, WEST OF CHORD ROAD RAJAJINAGAR BENGALURU-560 010
RESPONDENT THIS STRP IS FILED UNDER SECTION651) OF KARNATAKA
VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED1003.2021 PASSED IN STA NOS.298/2018 AND2992018 ON THE FILE
OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE
APPEALS AND SETTING ASIDE THE IMPUGNED

ORDER

DATED2605.2018 PASSED IN VAT AP. 01/17-18 (AY201011) AND VAT
AP.02/17-18 (AY201213) ON THE FILE OF THE JOINT COMMISSIONER OF
COMMERCIAL TAXES, (APPEALS-3) BENGALURU, DISMISSING THE
APPEALS AND UPHOLDING THE RE-ASSESSMENT

ORDER

DATED1303.2017 PASSED BY THE DEPUTY COMMISSIONER OF
COMMERCIAL TAXES (AUDIT) 3.3., DVO-3, BENGALURU FILED UNDER
SECTION391) R/W SEC.36 AND722) OF KVAT ACT 2003 FOR THE TAX
PERIOD OF APRIL 2012 TO MARCH2013 IN STRP No.14 OF 2022 BETWEEN :

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE DEPUTY
COMMISSIONER OF COMMERCIAL TAXES (AUDIT-1.5), 1.2 AND13 DVO-1,
YESHWANTHAPUR BENGALURU-560 022 STRP No.08 OF 2022 AND
CONNECTED MATTERS62. THE JOINT COMMISSIONER OF COMMERCIAL
TAXES (APPEALS-1) 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING,
K.H.ROAD SHANTHINAGAR BENGALURU-27 PETITIONERS (BY SHRI.
JEEVAN J.

NEERALGI, AGA) AND: M/s. SAMSUNG INDIA ELECTRONICS PVT. LTD. NO.13, CRN CHAMBER KASTURBA ROAD BENGALURU-560 001 REP BY ITS MANAGER RESPONDENT (BY SHRI. K. ARAVIND KAMATH, SENIOR ADVOCATE FOR SMT. VEENA J.

KAMATH, ADVOCATE) THIS STRP IS FILED UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED 1003.2021 PASSED IN STA NOS. 271 TO 274 AND 3022016 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEALS FILED AGAINST IMPUGNED

ORDER

DATED 3004.2015 PASSED IN VAT AP NOS. 61/15-16, VAT AP NO.142/15-16, VAT AP No.136/15-16, VAT AP NO.137/15-16, VAT AP NO.138/15-16 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS-1) BENGALURU, DISMISSING THE APPEALS AND UPHOLDING THE RE-ASSESSMENT

ORDER

S DATED 1012.2015 PASSED BY DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT) 1.3, DVO-31, BENGALURU, FILED UNDER SECTION 39(2) OF KARNATAKA VALUE ADDED TAX ACT, 2003 R/W SEC.36 OF KVAT ACT 2003 FOR TAX PERIOD OF APRIL 2010 TO MARCH 2011 IN STRP No.15 OF 2022 BETWEEN :

1. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-5) 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING, K.H.ROAD STRP No.08 OF 2022 AND CONNECTED MATTERS 7 SHANTHINAGAR BENGALURU-560 027.

2. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT-5.3) DVO-5, VTK-2 KORAMANGALA BENGALURU-560 047 PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. BHARTHI AIRTEL SERVICES LTD. PLOT NO.3B, KADUGODI INDUSTRIAL AREA SADARAMANGALA, WHITEFIELD BENGALURU-560 067 REP BY ITS MANAGER RESPONDENT (BY SHRI. SANDEEP HUILGOL, ADVOCATE) THIS STRP IS FILED UNDER SECTION651) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED1003.2021 PASSED IN STA No.260/2017 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL FILED AGAINST THE IMPUGNED

ORDER

DATED2802.2017 PASSED IN VAT AP No.22/16-17 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS-5) BENGALURU, DISMISSING THE APPEAL, FILED AGAINST THE RE-ASSESSMENT

ORDER

DATED0103.2016 PASSED BY ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT54, DVO-5, BENGALURU, FILED UNDER SECTION391) OF KVAT ACT1956R/W RULE372) FOR KVAT RULES 2005 FOR THE AY200910. IN STRP No.16 OF 2022 BETWEEN :

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE JOINT COMMISSIONER OF COMMERCIAL TAXES (ADMINISTRATIVE), DVO-06 KIADB BUILDING14H CROSS, PEENYA BENGALURU-560 058 STRP No.08 OF 2022 AND CONNECTED MATTERS82. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-2.4) KORAMANGALA BENGALURU-560 047 PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. MICROMAX INFORMATICS LTD. MAKALI VILLAGE DASANAPURA HOBLI BENGALURU-562 123 RESPONDENT (BY SHRI. G.S. ALOK, ADVOCATE AND SHRI. SAMEER JAIN, ADVOCATE) THIS STRP IS FILED UNDER SECTION651) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED1003.2021 PASSED IN STA3802016 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE

ORDER

DATED3001.2016 PASSED IN JCCT (A) DVO-6/SMR-15/2015-16 PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES (ADMINISTRATION) DVO-6, BENGALURU, FILED AGAINST

ORDER

DATED2209.2012 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-24), BENGALURU FOR THE TAX PERIODS OF APRIL 2010 TO MARCH2011 IN STRP No.17 OF 2022 BETWEEN :

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.7), DVO-4 2ND FLOOR, VTK-2 KORAMANGALA BENGALURU-560 047 2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) DVO-4, 2ND FLOOR, TTMC 'B' BLOCK STRP No.08 OF 2022 AND CONNECTED MATTERS9BMTC BUILDING, K.H.ROAD SHANTHINAGAR BENGALURU-27 PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. REDINGTON INDIA LTD. "SHREE NARAYAN TOWER"

5. H SECTOR, NO.144 1ST AND2D FLOOR, HSR LAYOUT HOSUR SARJAPUR ROAD BENGALURU-560 101 TIN:2990271265 REPRESENTED BY ITS DEPUTY GENERAL MANAGER-INDIRECT TAXES RESPONDENT (BY SHRI. P.E. UMESH, ADVOCATE) THIS STRP IS FILED UNDER SECTION651) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED1003.2021 PASSED IN STA No.536, 537 AND5382017 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE

APPEAL FILED AGAINST THE IMPUGNED

ORDER

DATED 17.08.2017 PASSED IN VAT AP NO.49/2016-17, VAT AP NO.64/2016-17, VAT AP No.129/2016-17 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS-4) BENGALURU, DISMISSING THE APPEAL AND UPHOLDING THE IMPUGNED

ORDER

DATED 30.05.2016, 14.06.2016, 03.11.2016 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.7) BENGALURU, U/S 39(1), 39(2), OF THE KVAT ACT 2003 FOR THE TAX PERIOD APRIL 2009 TO MARCH 2010 APRIL 2011 TO MARCH 2012 AND APRIL 2012 TO MARCH 2013 IN STRP NO.18 OF 2022 BETWEEN:

1. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.1) DVO-4, VTK-2, KORAMANGALA BENGALURU-560 047.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) STRP No.08 OF 2022 AND CONNECTED MATTERS 10 DVO-4, 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING, K.H.ROAD SHANTHINAGAR BENGALURU-560 027. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. WS RETAIL SERVICES PVT. LTD. NO.447 B, 1ST "A" CROSS 12H MAIN, 4TH BLOCK KORAMANGALA BENGALURU-560 034. REPRESENTED BY ITS MANAGER-ACCOUNTS RESPONDENT (BY SHRI. P.B.HARISH, ADVOCATE) THIS STRP IS FILED UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED 20.04.2021 PASSED IN STA NOS. 263, 265 AND 267/2017 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEALS FILED AGAINST THE

ORDER

S DATED 28.02.2017 PASSED IN VAT AP.56/ 2016-17, VAT AP.222/15-16, VAT AP.117/16-17 DISMISSING THE APPEALS PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS) SHANTHINAGAR, BENGALURU, AND UPHOLDING THE IMPUGNED RE-ASSESSMENT

ORDER

S DATED 10.12.2015,

ORDER

S REJECTING THE RECTIFICATION APPLICATIONS DATED 15.09.2016 AND RE-ASSESSMENT

ORDER

S DATED 15.06.2016 RESPECTIVELY PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT) 4.1 BENGALURU, FOR THE TAX PERIODS APRIL 2010 TO MARCH 2011 APRIL 2013 TO MARCH 2014 APRIL TO MARCH 2015 U/S 39(1) OF THE KVAT ACT. IN STRP No.19 OF 2022 BETWEEN:

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-1.2) DVO-1, TTMC, BMTC BUILDING STRP No.08 OF 2022 AND CONNECTED MATTERS 11 YESHWANTHAPUR BENGALURU-560 022.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-1) 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING K.H.ROAD SHANTHINAGAR BENGALURU-560 027. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. SAMSUNG INDIA ELECTRONICS PVT. LTD. NO.13, CRN CHAMBER KASTURBA ROAD BENGALURU-560 001. REP. BY ITS MANAGER RESPONDENT (BY SHRI. K.ARAVIND KAMATH, SENIOR ADVOCATE FOR SMT. VEENA J.

KAMATH, ADVOCATE) THIS STRP IS FILED UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED1003.2021 PASSED IN STA NOS. 389, 417 AND4712016 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEALS AND FILED AGAINST THE

ORDER

DATED2203.2016 PASSED IN VAT AP. No.171/15-16 AND

ORDER

DATED2903.2016 PASSED IN VAT.AP.NO.183/15-16 AND

ORDER

DATED2704.2016 PASSED IN VAT APPELLANT NO.01/16-17 DISMISSING THE APPEALS AND UPHOLDING THE RE-ASSESSMENT

ORDER

DATED2111.2015, 06.02.2016, 31.01.2016 AND2103.2016 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT) DVO-1, BENGALURU FILED UNDER SECTION391) AND392) OF KVAT ACT 2003 FOR THE TAX PERIOD OF APRIL 2014 TO MARCH2015 MAY 2008 TO MARCH 2009 AND APRIL 2009 TO MARCH 2010 RESPECTIVELY. STRP No.08 OF 2022 AND CONNECTED MATTERS12IN STRP No.20 OF 2022 BETWEEN:

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE STATE REPRESENTATIVE KARNATAKA APPELLATE TRIBUNAL M.S.BUILDING BENGALURU-560 001.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) DVO-4, 2ND FLOOR TTMC 'B' BLOCK BMTc BUILDING K.H.ROAD SHANTHINAGAR BENGALURU-27.

3. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.1) DVO-04, 4TH FLOOR VTK-2, KORAMANGALA BENGALURU-560 047. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. INGRAM MICRO INDIA PVT. LTD. NO.12, SHIVA GOVINDA BUSINESS CENTRE NEW HOSUR ROAD WILSON GARDEN

BENGALURU-560 027. REPRESENTED BY ITS AUTHORISED REPRESENTATIVE MR. KRISHNA T.C. RESPONDENT (BY SHRI. T.SURYANARAYANA, SENIOR ADVOCATE FOR MS. TANMAYEE RAJKUMAR, ADVOCATE) STRP No.08 OF 2022 AND CONNECTED MATTERS¹³THIS STRP IS FILED UNDER SECTION⁶⁵1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED²⁰04.2021 PASSED IN STA No.82/2019 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL FILED AGAINST THE IMPUGNED

ORDER

DATED²⁶12.2018 PASSED IN VAT AP No.127/2017- 18 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS-4) BENGALURU, PARTLY ALLOWING THE APPEAL, AND PARTLY UPHOLDING THE IMPUGNED

ORDER

DATED⁰⁷12.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.1) BENGALURU, FOR THE TAX PERIODS APRIL 2013 TO MARCH-2014 U/S⁶⁹1) OF THE KVAT ACT ON THE ORDR PASSED U/S³⁹1) OF THE KVAT ACT BY THE AA DATED³⁰11.2017. IN STRP No.21 OF 2022 BETWEEN:

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-3.7), DVO-3 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING, K.H.ROAD SHANTHINAGAR BENGALURU-27.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-3) 2ND FLOOR TTMC 'B' BLOCK BMTC BUILDING K.H.ROAD SHANTHINAGAR BENGALURU-27. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. PANASONIC INDIA PVT. LTD. NO.22/1, OLD NO.276/22/1 J.P.CHAMBER, 1ST FLOOR46H CROSS JAYANAGAR5H BLOCK STRP No.08 OF 2022 AND CONNECTED MATTERS14BENGALURU-560 011. REPRESENTED BY ITS MANAGER RESPONDENT (BY SHRI. VENKATESH S.ARBATTI, ADVOCATE) THIS STRP IS FILED UNDER SECTION65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED1003.2021 PASSED IN STA NOS. 309 AND3102018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL FILED AGAINST THE IMPUGNED

ORDER

DATED1506.2018 PASSED IN VAT AP No.13/2018-19 AND1418-19 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS-3) BENGALURU, DISMISSING THE APPEAL, FILED BY THE APPELLANT BY UPHOLDING THE IMPUGNED

ORDER

S DATED1303.2018 AND1403.2018 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-3.7) DVO-3, BENGALURU U/S39(1) OF THE KVAT ACT, 2003 FOR THE YEARS201314 AND201415. IN STRP No.22 OF 2022 BETWEEN:

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE KARNATAKA APPELLATE TRIBUNAL MULTI STORIED BUILDING DR.B.R.AMBEDKAR VEEDHI BENGALURU-560 001.

2. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (ENFORCEMENT-4) SOUTH ZONE KORAMANGALA BENGALURU-560 047. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. LG ELECTRONICS INDIA PVT. LTD. 11TH FLOOR, TOWER 'D' IBC KNOWLEDGE PARK M/1, BANNERGHATTA MAIN ROAD STRP No.08 OF 2022 AND CONNECTED MATTERS15BHAVANINAGAR,

SUDDAGUNTE PALYA BENGALURU-560 029. REP. BY ITS MANAGER
RESPONDENT (BY SHRI. RAVI RAGHAVAN, ADVOCATE) THIS STRP IS FILED
UNDER SECTION 651) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST
THE

JUDGMENT

DATED 10.03.2021 PASSED IN STA NOS. 20 TO 22/2019 ON THE FILE OF THE
KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL
FILED AGAINST THE IMPUGNED

ORDER

DATED 17.11.2018 PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL
TAXES, (APPEALS-4) BENGALURU, IN APPEAL NOS. VAT/AP/43/2018-19,
VAT/AP/03/2017-18, VAT/AP/04/2017-18 DISMISSING THE APPEALS BY
UPHOLDING THE IMPUGNED

ORDER

S DATED 24.04.2018, 30.07.2016 AND 30.07.2016, PASSED BY THE DEPUTY
COMMISSIONER OF COMMERCIAL TAXES (Enf-04) S.Z. BENGALURU. THE
DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.6),
BENGALURU UNDER SECTION 391), OF THE KVAT ACT, 2003 FOR THE TAX
PERIODS APRIL 2011 TO MARCH 2012 APRIL 2012 TO MARCH 2013 APRIL
2013 TO MARCH 2014 RESPECTIVELY. IN STRP No.23 OF 2022 BETWEEN:

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE STATE
REPRESENTATIVE KARNATAKA APPELLATE TRIBUNAL MULTI STORIED
BUILDING DR.B.R.AMBEDKAR VEEDHI BENGALURU-560 001.
2. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT-2.5)
DVO-2, 5TH FLOOR ROOM NO.505, "A" BLOCK KORAMANGALA
BENGALURU-560 047.
3. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS)-2 TTMC,
BMTc BUILDING SHANTHINAGAR BENGALURU-560 027. ...PETITIONERS (BY
SHRI. JEEVAN J.

NEERALGI, AGA) STRP No.08 OF 2022 AND CONNECTED MATTERS¹⁶AND:
M/s. LAVA INTERNATIONAL LTD., NO.64/2, 2ND CROSS PATTEGAR PALYA
SRINIVASANAGAR NAGARBHAVI BENGALURU-560 072. REPRESENTED BY
ITS MANAGER RESPONDENT (BY SHRI. RAVI RAGHAVAN, ADVOCATE) THIS
STRP IS FILED UNDER SECTION⁶⁵¹) OF KARNATAKA VALUE ADDED TAX
2003 AGAINST THE

JUDGMENT

DATED²⁷08.2021 PASSED IN STA No.364/2018 ON THE FILE OF THE
KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL
AND SETTING ASIDE THE IMPUGNED

ORDER

DATED²⁷08.2018 PASSED IN VAT AP NO.76/2017-18 ON THE FILE OF THE
JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-2) BENGALURU,
PARTLY ALLOWING THE APPEAL AND UPHOLDING THE RE-ASSESSMENT

ORDER

DATED²⁴05.2017 PASSED BY THE ASSISTANT COMMISSIONER OF
COMMERCIAL TAXES (AUDIT)^{2.5}, DVO-02, BANGALORE UNDER
SECTION³⁹¹) R/W SECTIONS³⁶AND⁷²²) OF THE KVAT ACT²⁰⁰³ FOR THE
ASSESSMENT YEAR FROM APRIL 2014 TO MARCH²⁰¹⁵ IN STRP No.24 OF
2022 BETWEEN:

1. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) 2ND
FLOOR, TTMC 'B' BLOCK BMTC BUILDING, K.H.ROAD SHANTHINAGAR
BENGALURU-560 027.
2. THE COMMERCIAL TAX OFFICER (AUDIT-4.3), DVO-4 VTK-2,
KORAMANGALA BENGALURU-560 047.
3. THE STATE OF KARNATAKA REPRESENTED BY ITS SECRETARY STRP
No.08 OF 2022 AND CONNECTED MATTERS¹⁷DEPARTMENT OF FINANCE
BENGALURU-560 001. ...PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/S. W.S. RETAIL SERVICES PVT. LTD NO.447 B, 1ST A CROSS KORAMANGALA BENGALURU-560 034. REP. BY ITS MANAGER ...RESPONDENT (BY SHRI. P.B.HARISH, ADVOCATE) THIS STRP IS FILED UNDER SECTION651) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED1003.2021 PASSED IN STA NO.383/2018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL PETITION FILED AGAINST THE

ORDER

S DATED2209.2018 PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS-4) BENGALURU, IN APPEAL NUMBERS VAT/AT/93/2016-17, PARTLY ALLOWING THE APPEAL FILED AGAINST THE

ORDER

S DATED:28.02.2017, PASSED BY THE COMMERCIAL TAX OFFICER (AUDIT-4.3) BENGALURU, UNDER SECTION92) OF CENTRAL SALES TAX ACT R/W691), OF THE KVAT ACT, 2003 FOR THE TAX PERIODS APRIL 2012 TO MARCH2013 IN STRP No.25 OF 2022 BETWEEN:

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.5), DVO-4 2ND FLOOR, VTK-2 KORAMANGALA BENGALURU-560 047.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) DVO-4, 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING, K.H.ROAD STRP No.08 OF 2022 AND CONNECTED MATTERS18SHANTHINAGAR BENGALURU-560 027. ...PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/S. REDINGTON INDIA LTD. "SHREE NARAYAN TOWER"

5. H SECTOR, NO.144 1ST AND2D FLOOR, HSR LAYOUT HOSUR SARJAPUR ROAD BENGALURU-560 101. TIN:2990271265 REPRESENTED BY ITS

DEPUTY GENERAL MANAGER- INDIRECT TAXES ...RESPONDENT (BY SHRI. P.E.UMESH, ADVOCATE) THIS STRP IS FILED UNDER SECTION65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED1003.2021 PASSED IN STA No.153/2019 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL PETITION FILED AGAINST THE IMPUGNED

ORDER

DATED0103.2019 PASSED IN VAT AP NO.178/2016-17 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS-4) BENGALURU, DISMISSING THE APPEAL AND UPHOLDING THE IMPUGNED

ORDER

DATED2102.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.5) BENGALURU, U/S392) OF THE KVAT ACT2003 FOR THE TAX PERIOD APRIL 2010 TO MARCH2011 IN STRP No.26 OF 2022 BETWEEN:

1. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-3) DVO-3, 2ND FLOOR TTMC 'B' BLOCK BMTC BUILDING, K.H.ROAD SHANTHINAGAR BENGALURU-27 2. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-3.3) STRP No.08 OF 2022 AND CONNECTED MATTERS19DVO-3, TTMC "B" BLOCK BMTC BUILDING, K.H.ROAD SHANTHINAGAR BENGALURU-560 027. ...PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. SAVEX TECHNOLOGIES PVT. LTD. NO.755/9, 13TH CROSS JAYANAGAR BENGALURU-560 070. REPRESENTED BY ITS MANAGER RESPONDENT (BY SHRI. ATUL KRISHNA RAO ALUR, ADVOCATE) THIS STRP IS FILED UNDER SEC.65(1) OF KARNATAKA VALUE ADDED TAX ACT2003 AGAINST THE

JUDGMENT

DATED2004.2021 PASSED IN STA NOS. 210 TO2132019 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BANGALORE, ALLOWING THE APPEALS FILED AGAINST THE IMPUGNED

ORDER

S NOS.VAT.AP.79/ 2017-18, DATED2404.2019 CST.AP.05/2017-18 DATED2404.2019 VAT AP.80/2017-18, DATED2404.2019, CST.AP.06/2017-18, DATED2404.2019 PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS)-3, SHANTHINAGAR, BENGALURU. PARTLY ALLOWING THE APPEALS BY SETTING ASIDE THE IMPUGNED

ORDER

S DATED2110.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, (AUDIT)-3.3, BENGALURU FOR THE TAX PERIODS201213 AND201314 U/S.39(1) OF THE KVAT ACT ANS SECTION92) OF THE CST ACT. IN STRP No.35 OF 2022 BETWEEN:

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE STATE REPRESENTATIVE KARNATAKA APPELLATE TRIBUNAL M.S.BUILDING BENGALURU-560 001.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) DVO-4, 2ND FLOOR, TTMC 'B' BLOCK STRP No.08 OF 2022 AND CONNECTED MATTERS20BMTC BUILDING K.H.ROAD, SHANTHINAGAR BENGALURU-560 027.

3. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.1) DGSTO-04, 'A' BLOCK4H FLOOR, ROOM NO.404 VTK-2, KORAMANGALA BENGALURU-560 047. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND M/s. INGRAM MICRO INDIA PVT. LTD. NO.12, SHIVA GOVINDA BUSINESS CENTRE NEW HOSUR ROAD WILSON GARDEN BENGALURU-560 027. REPRESENTED BY ITS AUTHORISED REPRESENTATIVE MR. KRISHNA.T.C RESPONDENT (BY SHRI. T.SURYANARAYANA, SENIOR ADVOCATE FOR MS. TANMAYEE RAJKUMAR,

ADVOCATE) THIS STRP IS FILED UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED 18.01.2022 PASSED IN STA NOS. 224/2018, 225/2018 AND 226/2018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEALS AND SETTING ASIDE

ORDER

DATED 27.02.2018 PASSED IN VAT.AP.NO.58/2017-18 AND VAT AP NO.83/2017-18 AND ON 08.03.2018 IN VAT AP NO.168/2016-17 PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) SHANTINAGAR BENGALURU, DISMISSING THE APPEAL FILED AGAINST THE RECTIFICATION

ORDER

DATED 23.05.2017 AND 21.07.2017 AND 25.01.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT(4.1)) BENGALURU FOR THE TAX PERIODS APRIL 2010 TO MARCH 2011 AND APRIL 2011 TO MARCH 2012 AND APRIL TO MARCH 2013 STRP No.08 OF 2022 AND CONNECTED MATTERS 21 IN STRP No.37 OF 2022 BETWEEN:

1. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-4 VANIJYA THERIGE BHAVANA NEHRU GROUND ROAD MANGALURU-575 001.
2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS) DVO, VANIJYA THERIGE BHAVANA MAIDAN ROAD MANGALURU. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND M/s. PRAKASH RETAIL PVT. LTD. DOOR No.4-95 AMBALPADY, KAPPETTU UDUPI REPRESENTED BY ITS MANAGING DIRECTOR SRI. SURYA PRAKASH RESPONDENT (BY SHRI. SANDEEP HUILGOL, ADVOCATE) THIS STRP IS FILED UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

JUDGMENT

DATED1712.2021 PASSED IN STA NO.281/2017, ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE

ORDER

DATED1904.2017 PASSED IN APPEAL NO.KVAT/AP/139/2015-16 PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS) MANGALURU, DISMISSING THE APPEAL AND FILED AGAINST THE RE-ASSESSMENT

ORDER

DATED2702.2016 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT4 DVO, MANGALURU, FILED UNDER SECTION391) OF KVAT ACT 2003 FOR THE TAX PERIOD OF THE YEAR201112. STRP No.08 OF 2022 AND CONNECTED MATTERS22IN STRP No.38 OF 2022 IN S.T.A No.262 OF 2017 BETWEEN:

1. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.1) DVO-4, 4TH FLOOR, ROOM NO.404 VTK-2, KORAMANGALA BENGALURU-560 047.
2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING, K.H.ROAD SHANTHINAGAR BENGALURU-560 027. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. W.S. RETAIL SERVICES PVT. LTD. NO.447 B, 1ST A CROSS KORAMANGALA BENGALURU-560 034. REPRESENTED BY MR. ANIL GUPTA -MANAGER ACCOUNTS RESPONDENT (BY SHRI. P.B.HARISH, ADVOCATE) IN S.T.A No.264 OF 2017 BETWEEN:

1. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.1) DVO-4, 4TH FLOOR ROOM NO.404, VTK-2 KORAMANGALA BENGALURU-560 047. STRP No.08 OF 2022 AND CONNECTED MATTERS232. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING, K.H.ROAD SHANTHINAGAR BENGALURU-560 027. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. W.S. RETAIL SERVICES PVT. LTD. NO.447 B, 1ST A CROSS KORAMANGALA BENGALURU-560 034. REPRESENTED BY MR. ANIL GUPTA -MANAGER ACCOUNTS RESPONDENT (BY SHRI. P.B.HARISH, ADVOCATE) IN S.T.A No.266 OF 2017 BETWEEN:

1. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.1) DVO-4, 4TH FLOOR ROOM NO.404, VTK-2 KORAMANGALA BENGALURU-560 047.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING, K.H.ROAD SHANTHINAGAR BENGALURU-560 027. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. W.S. RETAIL SERVICES PVT. LTD. NO.447 B, 1ST A CROSS STRP No.08 OF 2022 AND CONNECTED MATTERS24KORAMANGALA BENGALURU-560 034. REPRESENTED BY MR. ANIL GUPTA -MANAGER ACCOUNTS RESPONDENT (BY SHRI. P.B.HARISH, ADVOCATE) THIS STRP IS FILED UNDER SECTION651) OF KARNATAKA VALUE ADDED TAX ACT, 2003 AGAINST THE COMMON

JUDGMENT

DATED1401.2022 PASSED IN STA NOS.262/2017, 264/2017 AND2662017 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, ALLOWING THE APPEALS AND SETTING ASIDE

ORDER

S i.e. DATED2802.2017 PASSED IN CST.AP.53/2015-16 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS)-4, BENGALURU DISMISSING THE APPEAL UNDER SECTION92) OF CST ACT., BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-4.1, BENGALURU, FOR THE TAX PERIODS APRIL 2010 TO MARCH 2011 AND ETC. IN STRP No.39 OF 2022 BETWEEN:

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE COMMISSIONER OF COMMERCIAL TAXES VANIJYA THERIGE KARYALAYA-1 1ST MAIN ROAD GANDHINAGAR BENGALURU-560 009.

2. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT-2.5) DVO-2, 5TH FLOOR, ROOM NO.505 "A" BLOCK, KORAMANAGALA BENGALURU-560 047.

3. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS)-2 TTMC, BMTc BUILDING STRP No.08 OF 2022 AND CONNECTED MATTERS25SHANTHINAGAR BENGALURU-560 027. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. LAVA INTERNATIONAL LTD. NO.64/2, 2ND CROSS PATTEGAR PALYA SRINIVASANAGAR NAGARBHAVI BENGALURU-560 072. RESPONDENT (BY SHRI. RAVI RAGHAVAN, ADVOCATE) THIS STRP IS FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX 2003 AGAINST THE

ORDER

DATED2911.2021 PASSED IN STA No.179/2020 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE THE

ORDER

DATED1603.2020 PASSED IN VAT.AP.NO.124/2-17-18 PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-2) BENGALURU, DISMISSING THE APPEAL AND UPHOLDING THE RE-ASSESSMENT

ORDER

DATED2612.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT(2.3)) BENGALURU AND FOR THE TAX PERIODS FROM APRIL 2012 TO MARCH2013 IN STRP No.40 OF 2022 BETWEEN:

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE COMMISSIONER OF COMMERCIAL TAXES VANIJYA THERIGE KARLAYA-1 1ST MAIN ROAD, GANDHINAGAR BENGALURU-560 009.

2. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT-2.5) DVO-2, 5TH FLOOR ROOM NO.505, "A" BLOCK STRP No.08 OF 2022 AND CONNECTED MATTERS26KORAMANGALA BENGALURU-560 047.

3. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS)-2 TTMC, BMTC BUILDING SHANTHINAGAR BENGALURU-560 027. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. LAVA INTERNATIONAL LTD. NO.64/2, 2ND CROSS PATTEGAR PALYA SRINIVASANAGAR NAGARBHAVI BENGALURU-560 072. RESPONDENT (BY SHRI. RAVI RAGHAVAN, ADVOCATE) THIS STRP IS FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003, AGAINST THE

JUDGMENT

DATED2911.2021 PASSED IN STA No.178/2020 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE THE

ORDER

DATED1603.2020 PASSED IN VAT.AP.123/2017-18 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-2), BENGALURU, DISMISSING THE APPEAL AND UPHOLDING THE RE-ASSESSMENT

ORDER

DATED2612.2017 ISSUED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-2.3, DVO-2 BANGALORE, AND FOR THE TAX PERIODS FROM APRIL-2011 TO MARCH-2012. IN STRP No.43 OF 2022 BETWEEN:

1. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (INTERNAL AUDIT & INSPECTION)-3 DGSTP-03, TTMC, BMTC BUILDING2D FLOOR, SHANTHINAGAR BENGALURU-560 027. STRP No.08 OF 2022 AND CONNECTED MATTERS272. THE JOINT COMMISSIONER OF COMMERCIAL

TAXES (APPEALS-3) 2ND FLOOR, TTMC 'B' BLOCK BMTC BUILDING K.H.ROAD, SHANTHINAGAR BENGALURU-560 027. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. SONY INDIA PVT. LTD. NO.30, 2ND AND 5TH FLOOR JNR CITY CENTRE RAJA RAM MOHAN ROY ROAD SAMPANGIRAMANAGAR BENGALURU-560 027. REPRESENTED BY ITS AUTHORISED REPRESENTATIVE RESPONDENT (BY SHRI. KAMAL SAWHNEY, ADVOCATE ALONG WITH SMT. ANUSHKA GUPTA, ADVOCATE) THIS STRP IS FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003, AGAINST THE

ORDER

DATED 29.11.2021 PASSED IN STA No.155/2018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE THE

ORDER

DATED 20.01.2018 PASSED IN VAT.AP.144/16-17 (A.Y.2014-15) ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-3), BANGALORE, DISMISSING THE APPEAL AND UPHOLDING THE RE-ASSESSMENT

ORDER

DATED 28.02.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (INTERNAL AUDIT AND INSPECTION), DVO-3 BENGALURU AND FOR THE TAX PERIODS FROM 2014-15. IN STRP No.44 OF 2022 BETWEEN:

1. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT & RECOVERY)-5, DVO MANGALURU VANIJYA THERIGE BHAVANA STRP No.08 OF 2022 AND CONNECTED MATTERS 28 MAIDHAN ROAD MANGALURU-575 001.

2. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS) DVO, VANIJYA THERIGE BHAVANA MAIDAN ROAD MANGALURU-575 001. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. PRAKASH RETAIL PVT. LTD. DOOR NO.4-95 AMBALPADY, KAPPETTU UDUPI-576 101. REPRESENTED BY ITS MANAGING DIRECTOR SRI. SURYA PRAKASH RESPONDENT (BY SMT. H.VANI, ADVOCATE) THIS STRP IS FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003, AGAINST THE

ORDER

DATED 29.11.2021 PASSED IN STA No.137/2018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE THE

ORDER

DATED 19.01.2018 PASSED IN APPEAL NO.KVAT/APPELLANT/28/2017-18 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS), MANGALURU, DISMISSING THE APPEAL AND UPHOLDING THE RE-ASSESSMENT

ORDER

DATED 10.04.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT AND RECOVERY)-5, DVO MANGALURU AND FOR THE TAX PERIODS FROM 2010-11. IN STRP No.49 OF 2022 BETWEEN:

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE STATE REPRESENTATIVE KARNATAKA APPELLATE TRIBUNAL M.S.BUILDING BENGALURU-560 001. STRP No.08 OF 2022 AND CONNECTED MATTERS 292. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) DVO-4, 2ND FLOOR TTMC 'B' BLOCK BMTC BUILDING K.H.ROAD, SHANTHINAGAR BENGALURU-560 027.

3. THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.1) DGSTO-04, "A" BLOCK, 4TH FLOOR ROOM NO.404, VTK-2 KORAMANGALA

BANGALORE-560 047. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. INGRAM MICRO INDIA PVT. LTD NO.12, S.G.BUSINESS CENTRE NEW HOSUR ROAD WILSON GARDEN BENGALURU-560 027. REPRESENTED BY ITS AUTHORISED REPRESENTATIVE MR. RAHUL BARVE RESPONDENT (BY SHRI. T.SURYANARAYANA, SENIOR ADVOCATE FOR MS. TANMAYEE RAJKUMAR, ADVOCATE) THIS STRP IS FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003, AGAINST THE

JUDGMENT

DATED 29.11.2021 PASSED IN STA No.40/2021 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE THE

ORDER

DATED 07.01.2021 PASSED IN VAT.AP.34/2019-20 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS)-4, BENGALURU, DISMISSING THE APPEAL AND UPHOLDING THE RE-ASSESSMENT

ORDER

DATED 22.04.2019 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT)-4.1, BENGALURU AND FOR THE TAX PERIODS FROM APRIL 2014 TO MARCH 2015 STRP No.08 OF 2022 AND CONNECTED MATTERS 30 IN STRP No.51 OF 2022 BETWEEN:

1. THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) TTMC, BMTC BUILDING 2D FLOOR, SHANTHINAGAR BENGALURU-560 027.
2. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.3), DVO-4 VTK-2, "A" BLOCK, 2ND FLOOR KORAMANGALA BENGALURU-560 047. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. DRIVE INDIA ENTERPRISES SOLUTIONS LTD. NO.589, 2ND FLOOR SARJAPUR MAIN ROAD KORAMANGALA, 3RD BLOCK BENGALURU-560 034. REPRESENTED BY ITS AUTHORISED

REPRESENTATIVE RESPONDENT THIS STRP IS FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT 2003 AGAINST THE

JUDGMENT

DATED 29.11.2021 PASSED IN STA No.410/2018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE THE

ORDER

DATED 22.09.2018 PASSED IN VAT.AP.67/2016-17 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS-4) BENGALURU, DISMISSING THE APPEAL, FILED AGAINST THE RE-ASSESSMENT

ORDER

DATED 06.07.2016 PASSED IN NO.ACCT.AUDIT-4.3/T-/2016-17 ON THE FILE OF THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES, AUDIT-43, DVO-4, KORMANGALA, BENGALURU, FILED UNDER SECTION 62(6) OF THE KVAT ACT 2003 FOR THE TAX PERIOD OF APRIL 2012 TO MARCH 2013 STRP No.08 OF 2022 AND CONNECTED MATTERS 31 IN STRP No.53 OF 2022 BETWEEN:

1. THE STATE OF KARNATAKA REPRESENTED THROUGH THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS-1) 2ND FLOOR, TTMC 'B' BLOCK BMTc BUILDING K.H.ROAD, SHANTHINAGAR BENGALURU-27.

2. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT-1) VANIJYA THERIGE SANKEERNA 80 FEET ROAD SIDDARAMESHWARA BADAVANE TUMAKURU-572 101. PETITIONERS (BY SHRI. JEEVAN J.

NEERALGI, AGA) AND: M/s. TUMAKURU SRIVAARU MARKETING PVT. LTD. 1ST CROSS NEAR UPPARAHALLI RAILWAY GATE S.S.PURAM TUMAKURU-572 101. RESPONDENT THIS STRP IS FILED UNDER SEC.65(1) OF THE KARNATAKA VALUE ADDED TAX ACT, 2003, AGAINST THE

JUDGMENT

DATED 16.11.2021 PASSED IN STA No.234/19 AND 235/2019 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, ALLOWING THE APPEAL AND FILED AGAINST THE

ORDER

DATED 03.07.2019 PASSED IN VAT.AP.52/18-19 AND VAT.AP.NO.53/18-19 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS)-6, BENGALURU, DISMISSING THE APPEAL AND FILED AGAINST THE ASSESSMENT

ORDER

DATED 24.03.2018 PASSED BY THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT) 1, TUMKUR AND FOR THE TAX PERIODS FROM APRIL 2011 TO MARCH 2012 STRP No.08 OF 2022 AND CONNECTED MATTERS. THESE STRPs HAVING BEEN HEARD AND RESERVED FOR

ORDER

IS ON 29.11.2022 COMING ON FOR PRONOUNCEMENT OF

ORDER

S

JUDGMENT

, THIS DAY, P.S. DINESH KUMAR J., PRONOUNCED THE FOLLOWING:-

ORDER

This batch of Revision Petitions by the Revenue is being disposed of by this common judgment as they involve common questions of law.

2. The facts are illustratively taken from STRP No.8/2022 (State of Karnataka Vs. M/s Intex Technologies India Ltd.) directed against the order dated March 10, 2021 in STA No.88-91/2018 passed by the KAT1, Bengaluru. Though it has been admitted to consider three questions of law, after hearing Learned AGA for the Revenue and Learned Advocates for the Assesseees, in our opinion only the following question arises for consideration in all these petitions:

1. Whether on the facts and in the circumstances of the petitioner's case, the Appellate Tribunal was right in law in holding that "mobile phone chargers" sold along with mobile phone in a composite pack attracts tax at the same rate as applicable to "mobile phone" only and it 1Karnataka Appellate Tribunal STRP No.08 OF 2022 AND CONNECTED MATTERS33cannot be taxed at higher rate as unscheduled goods under Section 4(1) (b) (iii) of the Act?.

3. Briefly stated the facts in M/s. Intex Technologies India Ltd. are, it is a registered dealer under the Karnataka Value Added Tax Act, 2003². It is engaged in trading mobile phones, parts and accessories. It sells mobile phones in a composite package which also contains accessories such as headsets, cables, ejection pin, adapter, charger, manual etc. The AO³ passed an order under Section 39(1) of the KVAT Act subjecting to tax, the sales turnover of mobile charger at the rate of 13.5% to 14.5% for A.Y.⁴ 2010-11 to 2013-14. The assessee filed an application for rectification and the AO passed orders under Section 69 of the KVAT Act, rectifying the order by dropping estimated turnover as per the return and books of accounts. The JCCT(A)⁵ dismissed assessee's appeal. On further appeal, KAT, by the impugned order, has allowed assessee's appeal. Feeling aggrieved, the Revenue has preferred these petitions. 2 KVAT Act for short 3 Assessing Officer 4 Assessment Year 5 Joint Commissioner of Commercial Taxes (Appeals). STRP No.08 OF 2022 AND CONNECTED MATTERS³⁴4. Shri. Jeevan J.

Neeralgi, Learned AGA for the Revenue, praying to allow the petition, submitted that: Entry 53 of Third Schedule of the KVAT Act provides that IT⁶ Products and Telecommunication equipment are liable to be taxed at the rate prescribed under Section 4(1)(a)(ii) of the KVAT Act. However, insofar as it relates to Telecommunication equipment, the same requires to be notified by the State Government in exercise of powers conferred under the KVAT Act and the State Government has been issuing Notifications specifying the products which would be treated as IT products; Notification No.FD43CSL0702) dated April 4, 2007 states that IT products falling under Entry 53 of the Third Schedule of the KVAT Act have to be treated as IT Products; 6 Information Technology STRP No.08 OF 2022 AND CONNECTED MATTERS³⁵ the issue involved in these petitions are covered by the authority in State of Punjab & Others Vs. Nokia India Pvt. Ltd⁷

(hereinafter referred to as the Nokia India Case). mobile charger is not an integral part of the mobile phone to treat among composite goods because merely making a composite package of cell phone, charger shall not make it eligible as one of the composite goods for the purpose of interpretation of the provisions; the decision in Samsung (India) Electronics Pvt Ltd. Vs. State of Gujarat⁸ has no relevance; the decision in Samsung (India) Electronics Pvt. Ltd. Vs. State of UP⁹ (hereinafter referred to as the Samsung India Case) also has no relevance. The said authority cannot be treated as a binding precedent because the facts of present case are 7 2014 (16) SCC410 para 19 8 2020 (2) TMI12479 (2017) 77 Taxman.com 219 (All) STRP No.08 OF 2022 AND CONNECTED MATTERS³⁶ similar to the facts in Nokia India Case. In the Samsung India Case, the Honble High Court of Allahabad has interpreted the provisions contained in Article 366(29A) of the Constitution of India which mainly relates to the transfer of goods in due course of execution of a works contract. Therefore, the said authority does not support the case of assessee; re-opening of assessment is not based upon the judgment rendered in Nokia India Case by the Apex Court. The Commissioner of Commercial Taxes, in exercise of powers vested under Section 59(4) of the KVAT Act has issued a clarification on September 06, 2008 clarifying that the Mobile chargers attract tax at the rate of 12.5%; the Tribunal has erred in interpreting the Notification and holding that "Telephone sets, including telephones for Cellular networks" would include "sets" of Cellular Phones also; STRP No.08 OF 2022 AND CONNECTED MATTERS³⁷ chargers though sold with the mobile phones, are independent gadgets and therefore, cannot be taxed at par with a mobile phone; the Tribunal has erred in holding that charger sold along with mobile phone in a composite pack attracts tax as that of mobile phone, is contrary to law laid down in Nokia India Case.

5. Opposing the appeal, Shri. T. Suryanarayan, Shri. K. Arvind Kamath, Shri. Sandeep Huilgol, learned Senior Advocates and other Advocates for respective assessees, in substance, contented that: once the goods are manufactured/imported and cleared by classifying them under a particular HSN¹⁰ Code, then the only question that needs determination for VAT classification is whether the said goods is listed in IT product notifications or not; ¹⁰Harmonized System of Nomenclature STRP No.08 OF 2022 AND CONNECTED MATTERS³⁸

as per Rule 3(a) of the GRI¹¹, the entry of telephone sets is more specific and therefore, resorting to a residuary entry namely, the unscheduled goods, is unwarranted and as such Rule 3(b) of the GRI is applicable; the application of Rule 3(b) and the test of essential character was not argued in the Nokia India Case and there is no finding on the said aspect. However, this issue has been considered in Samsung India Case and it has been held that Nokia India Case is not applicable; it is settled that a special entry in law would over-ride a general entry and therefore, Entry 53 of the III Schedule of the KVAT Act, being a special entry for 'IT products and telecommunication equipment' read with the Notifications would undoubtedly take precedence; the sale of mobile phones along with its charger in a single retail package constitutes a composite contract ¹¹ General Rules of Interpretation STRP No.08 OF 2022 AND CONNECTED MATTERS³⁹ and requires the application of the dominant intention test, which is a proposition that was neither urged nor considered in Nokia India Case; as per Section 4 of the KVAT Act, charge is on the taxable turnover of a dealer. Under Rule 3 of the Karnataka Value Added Tax Rules 2005¹², there is no mechanism by which the Revenue may artificially split the single value for goods forming part of a set; pursuant to the judgment in Nokia India Case, the Central Government have issued Office Memorandum F.No.34011/18/2015-SO(ST) dated 30.11.2015 clarifying the position and advising States that accessories be treated as a part of the main item when they are sold as a single unit; entries under the KVAT Act and Punjab Value Added Tax Act, 1914¹³ are wholly different; ¹² KVAT Rules for short ¹³ the Punjab VAT Act for short STRP No.08 OF 2022 AND CONNECTED MATTERS⁴⁰ the Allahabad High Court in Samsung India case, under similar circumstances, has distinguished the decision of Honble Supreme Court in Nokia India Case and held that chargers sold as part of a composite package with mobile phones are taxable at the same rate as the mobile phones.

6. We have carefully considered the rival contentions and perused the records.

7. One of the main contentions raised by Revenue is that the decision in Nokia India Case delivered by the Honble Supreme Court is applicable to the present case.

8. The issue involved in Nokia India Case was whether mobile charger should be excluded from the entry of concessional rate of tax which applies to cellphones under the Entry 60(6)(g) of Schedule B of the Punjab VAT Act. The said Entry reads as follows: Telephones, cell phones, tele-printer, wireless equipment and parts thereof, Digital Video Disc and STRP No.08 OF 2022 AND CONNECTED MATTERS⁴¹ Compact Disc and Information Technology products as given hereunder - 6. Transmission apparatus other than apparatus for radio or TV broadcasting: (g) Cellular telephone

9. In Nokia India Case, the Apex Court has held that: 19. in view of the aforesaid facts, we find that the Assessing Authority, Appellate Authority and the Tribunal rightly held that the mobile/cellphone charger is an accessory to the cellphone and is not part of the cellphone. We further hold that the battery charger cannot be held to be a composite part of the cellphone but is an independent product which can be sold separately without selling the cellphone. The High Court failed to appreciate the aforesaid fact and wrongly held that the battery charger is part of the cellphone.

10. It is relevant to note that the decision in Nokia India Case is based on Entry 60(6)(g) of the Schedule B of the Punjab VAT Act. In the said Entry only cellular phone is defined and accessories are not included. The Honble Supreme Court of India has upheld Revenues contention in that case because Entry 60(6)(g) of Schedule B of the Punjab STRP No.08 OF 2022 AND CONNECTED MATTERS⁴² VAT Act does not mention accessories for the purpose of taxing the items/product at 4%.

11. Now, we shall analyse Entry 53 of Schedule III of the KVAT Act read with the Notification No.FD43CSL0702) dated April 4, 2007 issued by the State Government, which is for consideration in these present Revision Petitions before us.

12. Entry 53 of Schedule III of the KVAT Act reads thus: IT Products including telecommunication equipment as may be notified.

13. The Notification No.FD43CSL0702) dated April 4, 2007 is similar to the Entry in Heading 8517 of the Central Excise Tariff Act, 1985¹⁴ and the Customs Tariff Act, 1975¹⁵, which reads as: Telephone sets, including telephones in cellular network, or for other wireless networks and other apparatus for the transmission or reception of voice, imagers or other data, including apparatus for communication in a wired or wireless network (such as ¹⁴ the CET Act in short ¹⁵ the CT Act in short STRP No.08 OF 2022 AND CONNECTED MATTERS⁴³local or wide area network) and parts thereof, but excluding attachments and transmission or reception apparatus of heading 8843,8525,8527 or 8528. (Emphasis Supplied) 14. The Apex Court in Nokia India Case, further held that: 14. '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.

15. 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. (Emphasis Supplied) STRP No.08 OF 2022 AND CONNECTED MATTERS⁴⁴15. In Madhav Rao Jiwaji Rao Scindia Bahadur and Ors. Vs. Union of India¹⁶, the Apex Court has observed that: It is difficult to regard a word, a clause or a sentence occurring in a judgment of this Court, divorced from its context, as containing a full exposition of the law on a question when the question did not, even fall to be answered in that judgment.

16. Para 14 of the judgment in Nokia India Case, clearly indicates that the said decision is based on Entries of the Punjab VAT Act, wherein the prime issue for consideration was whether the mobile charger is an accessory or not. But in the case on hand, the issue involved is, when the mobile phone is sold along with the charger what must be the rate of tax?.

17. The Allahabad High Court, in the facts of that case has distinguished Nokia India Case and held thus: 9. On the submissions made and decision relied on, we have no hesitation in holding that all the material was before the authorities concerned Judgment in State of Punjab v. Nokia India Pvt. Ltd., (2014) 16 SCC410 could not have been followed so as to invoke the 161971 SCR (3) 9 STRP No.08 OF 2022 AND CONNECTED MATTERS⁴⁵ jurisdiction under Section 29 of the Act because in the case on hand as far as Nokia was concerned, the phone charger was sold as a separate accessory and, therefore, Apex Court held that it is not part of mobile phone. The battery was supplied with mobile phone and, therefore, battery charger was earlier classified as cell phone and it's part and that battery charger was sold as a separate entity and not as accessory. On merit, we hold that petitioner placed before respondents various facts to show that petitioner was a single unit as a cell phone and that assessments, which were made, could not have been reopened on the basis of a subsequent judgment and same was bad in the eyes of law 10. In the facts of this case, it cannot be said that there was any fresh material nor any tangible material which would permit the authorities to reassess or issue said notice. Decision of Nokia will not apply to facts of this case. (Emphasis Supplied) 18. As noticed hereinabove, in Entry No.60(6)(g) of the Punjab VAT Act, the expression used is cellular telephone whereas in the Notification issued under KVAT Act, the words used are and parts thereof. Further, the parts falling under Heading 8843, 8825, 8527 or 8528 have been specifically excluded. It is relevant to notice that, battery charger which falls under Entry 8504 40 30 under the CET Act and CT Act, STRP No.08 OF 2022 AND CONNECTED MATTERS⁴⁶ has not been excluded. This makes it clear that charger is a composite part in the package. Thus, the intention of the Revenue is unambiguous that the Notification was applicable for telephone sets and parts thereof which includes charger. Therefore, in our considered view, the Entries in Punjab VAT Act and the KVAT Act are different and the Entry under the Punjab VAT Act is limited only to cellular telephones in contradistinction to the Notification under KVAT Act.

19. Rule 3(b) of the GRI reads as follows:

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

20. Explanation X of Rule 3(b) of the GRI reads: For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which: (a) consist of at least two different articles which are, prima facie, classifiable in different headings. STRP No.08 OF 2022 AND CONNECTED MATTERS⁴⁷(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and (c) are put up in a manner suitable for sale directly to users without repacking (eg. in boxes or cases or on boards).

21. Therefore, in view of the above, telephone sets can be considered as goods put up in sets for retail sale under Rule 3(b) of the GRI.

22. Further, Rule 3(b) states that goods put up in sets for retail sale shall be classified as if they consist of the material or component which gives them their essential character. In the present case, the essential character of mobile set is the mobile phone and not the charger. Thus, the classification based on components mentioned above would apply and as per the essential character, the retail set containing of a mobile phone and a mobile charger shall be classifiable as mobile phones under heading 8517. STRP No.08 OF 2022 AND CONNECTED MATTERS⁴⁸23. In BSNL v. Union of India¹⁷, relied upon by the assessees, it has held that: 50. What are the "goods" in a sales transaction, therefore, remains primarily a matter of contract and intention. The seller and such purchaser would have to be ad idem as to the subject-matter of sale or purchase. The court would have to arrive at the conclusion as to what the parties had intended when they entered into a particular transaction of sale, being the subject matter of sale or purchase. In arriving at a conclusion the court would have to approach the matter from the point of view of a reasonable person of average intelligence. (Emphasis Supplied) 24. The Assessees have rightly canvassed the application of Dominant Intention Test. There can be no doubt that the main intention of a purchaser/seller

while buying/selling a Mobile Set is to buy/sell the mobile phone and not charger alone. Supply of charger, headset, and ejection pin are incidental to the sale. Therefore, the Dominant Intention Test would apply to the present case and hence, charger cannot be differently taxed. 17(2006) 3 SCC1STRP No.08 OF 2022 AND CONNECTED MATTERS4925. Section 4 of the KVAT Act reads as follows: 4. Liability to tax and rates thereof.- (1) Every dealer who is or is required to be registered as specified in Sections 22 and 24, shall be liable to pay tax, on his taxable turnover, (a) in respect of goods mentioned in,- (i) xxx (ii) Third Schedule, at the rate of five per cent, and (iii) xxx

26. The mobile phone finds its place in III Schedule and taxable at 5% and therefore, the charger which is also sold along with mobile phone in one set is together chargeable at 5%. This view is in consonance with the law laid down by the Apex Court in CIT Vs. B.C. Srinivasa Setty¹⁸, wherein it is held that the charging section and the computation provisions constitute an integrated code and if these two requirements are not jointly present, no tax can be levied or sought to be recovered. The relevant portion of the judgment reads as follows:

18. (1981) 5 Taxmann 1 (SC) STRP No.08 OF 2022 AND CONNECTED MATTERS5010. A transaction to which those provisions cannot be applied must be regarded as never intended by Section 45 to be the subject of the charge. This inference flows from the general arrangement of the provisions in the Income Tax Act, where under each head of income the charging provision is accompanied by a set of provisions for computing the income subject to that charge. The character of the computation provisions in each case bears a relationship to the nature of the charge. Thus the charging section and the computation provisions together constitute an integrated code. When there is a case to which the computation provisions cannot apply at all, it is evident that such a case was not intended to fall within the charging section (Emphasis Supplied) 27. A bare perusal of the Section 4 (charging section) of KVAT Act and Rule 3 (computation provision) of KVAT Rules would clearly indicate that there is no prescribed mechanism provided for determining the value of individual goods in a composite transaction. Thus, in the absence of a valuation mechanism, tax cannot be levied differently on each of the component by separating a single composite package.

28. In view of the above discussion, we are of the considered view that the definition contained in the STRP No.08 OF 2022 AND CONNECTED MATTERS⁵¹ Notification issued under the KVAT Act includes the charger which is sold along with the mobile phone in one set and accordingly taxable at 5%.

29. Resultantly, this revision petition fails. Hence, the following:

ORDER

(a) These revision petitions are dismissed. (b) The substantial question of law is answered in favour of the Assessee and against the Revenue. No Costs. Sd/-
JUDGE Sd/- JUDGE SPS

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com