APHC010286532018

IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI **[3529]**
(Special Original Jurisdiction)

WEDNESDAY,THE TWENTY NINETH DAY OF APRIL
TWO THOUSAND AND TWENTY SIX

PRESENT

THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

<u>WRIT PETITION NOs: 15649, 15672, 15699, 15776, 16520, 22262, 24485, 24731, 26985, 27011, 33706 of 2018, 6129, 6130, 8186, 8204, 19514, 19534, 20971 of 2019, 1896 of 2020, 10859 and 18442 of 2022</u>

<u>W.P.No.15649 of 2018</u>

Between:

1. M/S. SANGEETHA SUDHA MOBILE WORLD,, ELURU REPRESENTED BY ITS PROPRIETOR, SHRI. V. SURESH BABU, S/O. LATE. RAMMOHAN RAO, AGED ABOUT 58 YEARS, R/O. ELURU, WEST GODAVARI DISTRICT.

...PETITIONER

AND

1. STATE OF ANDHRA PRADESH, REP BY ITS PRINCIPAL SECRETARY, REVENUE(CT) DEPARTMENT, VELAGAPUDI, AMARAVATHI, GUNTUR DISTRICT, ANDHRA PRADESH. GUNTUR
2. THE DEPUTY COMMERCIAL TAX OFFICERII, ELURU CIRCLE, ELURU WEST GODAVARI DISTRICT.
3. THE COMMERCIAL TAX OFFICER, ELURU. WEST GODAVARI DISTRICT.
4. THE SPECIAL CHIEF SECRETARY, GOVERNMENT OF ANDHRA PRADESH, REVENUE (CT-II) DEPARTMENT, VELAGAPUDI,

AMARAVATHI, GUNTUR DISTRICT, ANDHRA PRADESH.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased toto issue an appropriate writ, order or direction particularly in the nature of Writ of mandamus declaring the action of 2nd respondent dated 29-02-2016 in A.O. No. 8002 in TIN 37898959408 for the period 2011-12 (01/12 to 03/12) to 2015-16 (Upto May 2015) directing the Petitioner to pay 25percentage of the disputed tax as penalty under section 53(1)(ii) on the batteries, chargers sold by the Petitioner which in fact was sold as a composite pack along with the mobile phone to its customers as illegal, arbitrary, unjust, improper and against the clarificatory amendment to sub entry (15) of Entry 39 of IV Schedule to the APVAT Act 2005 and consequently set aside the proceedings and grant

IA NO: 1 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the 2nd respondents not to is take any coercive action for recovery of the disputed penalty of Rs. 53,872/- else as petitioner would suffer serious loss and hardship and gran

IA NO: 2 OF 2018

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased

Counsel for the Petitioner:

1. M V J K KUMAR

Counsel for the Respondent(S):

1. GP FOR COMMERCIAL TAX (AP)

The Court made the following Common Order:

(Per Hon'ble Sri Justice R. Raghunandan Rao)

Heard Sri M.V.J.K.Kumar, the learned counsel for the petitioners and the learned Government Pleader for Commercial Tax appearing for the respondents.

2. As all these writ petitions raised the same issues, they have been disposed of by way of this common order.

3. The petitioners are all manufacturers or dealers in Cell phones and Cell phone equipment. During the period 2011-2012 to 2016-2017, these petitioners had been taxed, under the Andhra Pradesh Value Added Tax Act, 2005 (for short, 'the APVAT Act') for the sale of such Cell phones and Cell phone equipments. The details of the assessment as well as the penalties in certain cases and appeals in certain cases are given herein below:

Sl. No	Writ Petition	Party name	Order Passed by	Assessment Years	Order Date
1	15649/2018	M/s Sangeeta Sudha Mobile World	Penalty	2011-12 to 2015-16	29.12.2016
2	15672/2018	M/s Sangeeta Sudha Mobile	VAT 305	2011-12 to 2015-16	25.02.2016
3	15669/2018	M/s lakshmi Communications	VAT 305	2014-15	03.09.2015
4	15776/2018	M/s Vanama Raju	VAT 305	2009-10 to 2010-11	12.05.2016
5.	16520/2018	M/s Sri Hari Hara Agencies	VAT 305	2012-13 to 2015-16	31.07.2017
6.	22262/2018	M/s Vasavi Agencies	Deputy Commissioner	2010-11 to 2012-13	18.01.2017
7.	24485/2018	M/s Hasith CellPlaza	Penalty	2009-10 to 2014-15 appeal order	07.08.2017
8.	24731/2018	M/s Hasith CellPlaza	Appellate Joint	2010-11 to 2014-15 Appeal Order	07.08.2017

			Commissioner		
9.	26985/2018	M/s Mobi Care	Penalty	2012-13 to 2016-17	31.10.2017
10.	27011/2018	M/s Mobi Care	VAT 305	2012-13 to 2016-17	16.09.2017
11.	33706/2018	2018M/s Fusion Voice	VAT 305	2013-14 to 2015-16	16.08.2016
12.	6129/2019	M/s Vivo Mobile India	VAT 305	2015-16 to 2016-17	30.03.2016
13.	6130/2019	M/s V.Dream Technolgies	VAT 305	2015-16 to 2016-17	30.03.2016
14.	8186/2019	M/s Vivo Mobile India	Penalty	2015-16 to 2016-17	30.03.2016
15.	8204/2019	M/s V.Dream Technologies	Penalty	2015-16 to 2016-17	07.05.2019
16.	19514/2019	M/s Radhkrishna Enterprises	VAT 305	2012-13 to 2015-16	21.11.2017
17.	19534/2019	M/s Radhakrishna Enterprises	Penalty	2012-13 to 2015-16	21.11.2017
18.	20971/2019	M/s Konkimalla Somayya	VAT 305	2013-14	09.09.2019
19.	1896/2020	M/s Fusion Voice Solutions	Penalty	2013-14 to 2015-16	30.12.2019
20.	10859/2022	M/s United Tele Links Limited	Appellate Deputy commissioner VAT 305	2016-17 Appeal order	25.03.2021
21.	18442/2022	M/s United Tele Links BLR Limited	Appellate Deputy commissioner VAT 305	2014-15 Appeal Order	30.07.2019
22.	16461/2018	M/s Hari Hari Agencies	Penalty	2012-13 to 2015-16	08.01.2018
23.	15641/2018	M/s Lakshmi Communications	Penalty	2014-15	21.09.2015
24.	22295/2018	M/s Singapore Plaza	Additional commissioner	2011-12 to 2014-15	04.05.2018

4. In all these cases, the goods which were sold, were Cell phones, Cell phone batteries and Cell phone battery chargers and head phones in some cases. All these good were put together and sold in one unit and a composite price was received for sale of these products. The assessing authorities as well as the Appellate authorities took the view that the sales, made by the petitioners, were sales of three separate goods namely Cell phones, Cell

phone batteries and Cell phone chargers and in some cases head phones. On that basis, the authorities sought to levy the Value Added Tax, at different rates for these different products. The petitioners contended that all the said products, which were sold us one component and could not have been bifurcated into separate products and separate rate could not have been levied on the products.

5. As the authorities did not accept these contentions, the petitioners after having suffered orders of assessment, orders of penalty as well as the appellate orders and revisional orders have approached this Court, by way of the above writ petitions.

6. Before going into the contentions raised by either side, it would be necessary to review the facts leading to the present set of writ petitions.

7. The APVAT Act, which was brought into effect from 01.04.2005, stipulated the rate of tax on every product enumerated in the schedules attached to the said Act. There was also a residuary entry in schedule VII fixing a uniform rate of tax, for those which were not enumerated in the goods. Cell phones, were covered under Entry 39 (15 of the Schedule-IV) to the APVAT Act which reads as follows, prior to the amendment.

> " (15) Transmission apparatus other than apparatus for radio broadcasting or TV broadcasting, transmission apparatus incorporating reception apparatus, digital still image video cameras "

8. There was a dispute as to whether Cell phone chargers should be treated as being a part of the Cell phones which would require sale of Cell phone battery chargers to be taxed at the same rate as that of Cell phone. This dispute was resolved by the Hon'ble Supreme Court in the case of **The state of Punjab and Ors vs. Nokia India Pvt Ltd.**[1] . In this judgment, the Hon'ble Supreme Court after reviewing the law on the question of what would constitute parts of the main product had held that Cell phone battery charger cannot be treated as part of the Cell phone. Thereafter, on the representation of the various Industry body, the Central Government had issued a office Memorandum, dated 30.11.2015, in which the States were advised to treat the Cell phone batteries and chargers to be the part of the Cell phones and to tax them at one rate. Thereafter, the Government of Andhra Pradesh issued G.O.Ms.No.307, Revenue (CT-II) Department, dated 12.07.2016. By virtue of this G.O., entry 39 (15) of Schedule-IV of the APVAT Act was modified as follows:

<u>Amendment</u>

> In Schedule-IV appended to the said Act, in entry 29, for sub-entry (15), the following shall be substituted, namely, -
>
> "(15) Transmission apparatus other than apparatus for radio broadcasting or T.V. broadcasting, transmission apparatus incorporating reception apparatus including Cell phones, Cell Phone Batteries and Cell Phone Battery Chargers, digital still image video cameras".

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[1] AIR 2015 SC 1068.

9. By virtue of this amendment, the sale of Cell phones, Cell Phone Batteries as well as Cell phone Battery Chargers could be taxed only @ 5% and as such, the controversy as to whether there should be the sale of these products should be taxed separately or not could not be survived as the sale of these products would have to be taxed at the same rate.

10. The issue that remains is whether the authorities were correct in holding that composite sale of these three products together, by the petitioners, should be separated into three separate sales of three different categories of products which are to be taxed at differential rates of tax.

11. Both sides, aggrieved that Cell Phone Batteries and Cell Phone Battery Chargers have not been enumerated in the Schedules to the APVAT Act. In such circumstances, the residuary rate of tax, would apply to Cell Phone Batteries and Cell Phone Battery chargers, if they are to be treated as separate sales. As far as the batteries are concerned, it would be necessary to consider whether the batteries are to be treated as part of the Cell Phone or not.

12. The Hon'ble Supreme Court in **Nokia** case (supra), while considering a similar question, as set out above has held that the test to consider whether a particular good would be part of another good or accessory to such goods had, held, following the earlier judgment of the Hon'ble Supreme Court in

Annapurna Carbon Industries Co. vs. State of Andhra Pradesh[2] held that "an object or devise that is not essential in itself but that adds to the duty, convenience or effectiveness of something else would be an accessory and not a part". The test would therefore be whether a Cell phone battery is an essential necessity of the Cell phone to function. There is no doubt that a Cell phone cannot function without a battery being installed in the Cell phone. In such circumstances, a Cell phone battery would have to be treated to be a part of Cell phone. Consequently, the rate of tax on the Cell phone battery would have to be treated at the same rate when such battery is sold along with the Cell phone.

13. As far as Cell phone battery chargers are concerned, the Hon'ble Supreme Court already held that the Cell phone battery chargers are only accessories to a Cell phone and cannot be treated to be part of the Cell phone. However, there is another aspect which would have to be considered before holding that the sale of Cell phone battery chargers along with the Cell phones would not attract a different rate of tax.

14. The Hon'ble High Court of Karnataka while considering the question of whether Cell phone chargers should be taxed at different rates, when supplied along with the Cell phones, had held in **State of Karnataka and Others vs. Intex Technologies India Limited**[3] that when Cell phone chargers are sold or supplied along with the Cell phone, as one unit, the test that would have to

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[2] 1976 3 SCR 561 = 1976 AIR 1418
[3] (2023) 161 GSTR 185 (Karnataka)

be applied is the dominant intention test. This would mean that test for determining whether separate rate of tax should be levied or a uniform rate of tax should be levied, would be to ascertain whether the intention behind the sale or supply of separate goods along with the main goods is incidental to the same or whether they are separate sales which are being combined for the purpose of reducing the tax liability. In the present case, the contention of the petitioners, is that the customers were being supplied with not only with the Cell phones, but also the means to keep the said Cell phones operational as the battery in a Cell phone requires to be charged frequently. Further, the petitioners would also contend that there was no intention to bifurcate the value of products in the Cell phone pack which has been sold. In some cases, it is also the contention of the petitioners that as no value was assigned to the Cell phone battery chargers, no tax could have been levied on such supply / sale of Cell phone battery chargers.

15. Another aspect that would have to be considered to the fact that the authorities, while seeking to levy tax at differential rate, on Cell phone battery chargers, have not explained as to how the sale price of the composite unit was being bifurcated between the Cell phones, the Cell phone batteries and the Cell phone battery chargers. Except stating that the rate of tax on battery chargers was reduced to 5% by a Government Memo, dated 30.11.2016, no explanation has been given as to how such bifurcation is to be carried out. This effectively indicates that the authorities have also accepted in principles

that the dominant intention of the petitioners is to supply Cellphone batteries as well as the battery chargers as a part of the Cell phones so as to ensure that the said Cell phones continued to operate effectively.

16. As far as the head phones are concerned, it would not be appropriate for us to hold that such head phones are an essential part of the functioning of the Cell phones as such head phones are only accessories which improve or accentuate the Cell phones.

17. For these reasons, these Writ Petitions are disposed of in the following manner:

1) All the impugned orders at the stage of assessment, penalty or appeal or revision are set aside.
2) These matters are remanded back to the respective authorities, to complete the consequential proceedings in the following manner:
   i) Sales of Cell phones, Cell phone batteries and Cell phone battery chargers effected after 12.07.2016 would have to be taxed only @ 5%;
   ii) Sales of Cell phones and Cell phone batteries as well as Cell phone battery chargers prior to the State would also have to be taxed only @ 5% as there is no means of splitting the sale price into separate components. This would apply only to the pre-packaged units of Cell phones, Cell phone batteries and Cell

phone battery chargers. The rate of tax for these sales would be @ 4% or 5% depending upon the prevailing rate of tax;

iii) The sale of head phones can be taxed at the appropriate rate provided such head phones had been sold as separate units and they are not any part of the pre-packed retail pack.

3) There shall be no order as to costs.

As a sequel, pending miscellaneous applications, if any, shall stand closed.

R. RAGHUNANDAN RAO, J

T.C.D. SEKHAR, J

Date: 29.04.2026
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THE HONOURABLE SRI JUSTICE R RAGHUNANDAN RAO

THE HONOURABLE SRI JUSTICE T.C.D.SEKHAR

WRIT PETITION NOs: 15649, 15672, 15699, 15776, 16520, 22262, 24485, 24731, 26985, 27011, 33706, 16461, 15641, 22295 of 2018, 6129,,6130, 8186, 8204, 19514, 19534, 20971 of 2019, 1896 of 2020, 13859

and 18442 of 2022

Date: 29.04.2026
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