IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

Civil Revision No. 11 of 2023

Reserved on: 02.04.2025

Decided on: 10.04.2025

State of H.P. and others .....Petitioners

Versus

M/s Micromax Informatics Ltd. ....Respondent

Coram:

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

The Hon'ble Mr. Justice Sushil Kukreja, Judge.

Whether approved for reporting?[1] *Yes*

For the petitioners: Mr. Anup Rattan, A.G. with Mr. I.N.Mehta, Senior Additional Advocate General, Ms. Sharmila Patial, Mr.Sushant Keprate, Additional Advocates General, Mr. Raj Negi, Ms. Swati Draik and Mr. Shalabh Thakur, Deputy Advocates General.

For the respondent: Ms. Anu Sura and Mr.Anubhav Chopra, Advocates.

Justice Tarlok Singh Chauhan

This Civil Revision was admitted on 12.10.2023, on the following questions of law:-

> A. Whether the Ld. Tribunal has failed to appreciate the entries made in the Schedules of the HP VAT Act, 2005 in respect of goods/articles/commodities/items to be taxed as per the rates prescribed in the Schedules appended to the H.P. VAT Act, 2005.
>
> B. Whether the Ld. Tribunal has wrongly interpreted the contents of the judgment in Nokia India Pvt. Ltd. case by

[1] Whether reporters of the local papers may be allowed to see the judgment? Yes.

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the Hon'ble Supreme Court and the orders passed by the Authorities below without adhering to the legal proposition settled down by the Hon'ble Supreme Court.

C. Whether the orders of the Ld. Tax Tribunal are perverse and contrary to the provisions laid down in the VAT Act and the law settled by the Hon'ble Supreme Court in Nokia's case.

D. Whether the order of the Ld. Tax Tribunal has wrongly treated the mobile battery charger taxable@5% instead of 13.75% at par with cell phone chargeable @5%.

E. Whether the Ld. Tax Tribunal is justified in passing the impugned order especially when as per entry No. 60(f)(vii) of part-II A of schedule-A of the HP VAT Act., 2005, does not include mobile charger and other accessories.

F. Whether the cell phone charger is an accessory to the cell phone and is not a part of the cell phone. The battery charger cannot be held to be a composite part of the cell phone, but it is an independent product which can be sold separately, without selling the cell phone. The Ld. H.P. Tax Tribunal has miserably failed to appreciate this aspect and wrongly held that the battery charger is a part of the cell phone.

2 Since all these questions are intrinsically interlinked and interconnected, therefore, the same are being considered together and disposed of by common reasoning.

3 This revision petition has been filed against the order dated 09.06.2022 passed by the H.P. Tax Tribunal, Dharamshala (camp at Shimla) whereby the Tribunal allowed the appeal filed by the respondent herein and set-aside the

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assessment order dated 13.05.2015 for the financial years 2013-14 and 2014-15 passed by the Assessing Authority-cum-Dy.Excise & Taxation Commissioner, Flying Squad, South Zone. Vide assessment order passed under Sections 16 and 60 of the H.P. VAT Act, 2005, the Dy. Excise and Taxation Commissioner had raised differential VAT liability amounting to ₹24,52,973/- including interest under the H.P.VAT Act on the sale of cellphone chargers sold alongwith cellphone in retail packs, during the period 01.04.2014 to 31.03.2016. A value of ₹48/- per charger has been adopted by the Assessing Officer and charges in question were assessed at a differential rate of 8.75% as the respondent had already deposited VAT at the rate of 5% which was levied on the cellphone.

4 It is vehemently argued by learned Advocate General that the issue in question is no longer *res integra* and stands settled by the judgment of the Hon'ble Supreme Court in ***State of Punjab and others versus Nokia India Ltd. 2014 (16) SCC 410***, wherein the Hon'ble Supreme Court has categorically held that the mobile/cellphone charger is an accessory to the cellphone and is not a part of the cellphone. Therefore, the battery charger cannot be held to be composite part of the cellphone but is an independent product which can be sold separately, without selling the cellphone.

5 On the other hand, Ms. Anu Sura, learned counsel for the respondent has relied upon the judgment of Allahabad High Court in ***M/s Samsung (India) Electronics Pvt. Ltd. vs. Commissioner of Commercial Taxes, 2016 SCC Online All 5982***, order dated 20.2.2025 passed by the Hon'ble Supreme Court in ***SLP No. 34086/2015, titled as M/s Naresh Kumar Gupta vs. The State of Punjab***, Division Bench judgment of Karnataka High Court in ***The State of Karnataka and others versus Intex Technologies India Limited and others, ILR 2023 Karnataka 279*** and order of dismissal dated 08.12.2023 in SLP preferred by the State of Karnataka vide SLP diary No. 40320 of 2023.

6 In addition thereto, she has relied upon office memo dated 30.11.2015 wherein it was clarified by the government that the mobile charger has to be considered as compulsory to be supplied with the mobile and would therefore, attract same rate of duty, whereby the State was advised to consider the accessory to be part of main item when they are bundled and sold together.

7 We have heard the learned counsel for the parties have also gone ground through the records of the case carefully.

8 In order to appreciate the controversy in issue, it would be necessary to set out the statutory provisions of the

states of Punjab, Himachal and U.P. with regard to cellular phones/cellphones. The interpretation, tax statement and legal basis are as under:-

Parameter	Punjab (Nokia case)	HP	UP	Karnataka
Statutory text	"Cellular Phones" Entry 60(6)(g) Pujab VAT Act, 2005	"Cellular phone" Entry 60(f) (vii) HP VAT Act, 2005	"Cell phones and its parts but excluding cellphones with MRP exceeding Rs.10,000" Entry 28 UP VAT Act, 2008	"IT products including telecommunication equipment as may be notified" Entry 53 of Karnataka VAT Act, 2003
Interpretation	Supreme Court held that Charger is an accessory of a cellphone. Therefore, taxed under residual entry. Reasons assigned in para 16 and 17 of the judgment.	To follow Nokia judgment as per Article 141 as the VAT Act entry of Punjab and Hmachal; are para material.	Entry 28 of UP VAT Act is completely different than that of Entries of Punjab and Himachal VAT act, hence, distinguised the NOKIA	Followed UP. Wording of the entry is different than Punjab Entry 60(6)(g) Punjab VAT Act, 2005 and Himachal Entry.
Tax treatment	Charges @ 12.5% (Residual Entry)	Chargers @ 13.5% (Residual Entry)	Chargers taxed @ of cellphones	Chargers taxed @ of cellphones
Legal Basis	VAT Entry	VAT Entry identical to Punjab.	Distinct Entry from Punjab, MRP, and test of essentiality.	Distinct Entry from Punjab, MRP, and test of essentiality.

9 It is not in dispute that **in *Nokia India Pvt. Ltd.'s case*** (supra), the Hon'ble Supreme Court had rendered judgment in context of Punjab Vat Act, wherein entry 60(6)(g) of Schedule B did not mention accessories for the purpose of taxing the item/product @4% and thus are liable for being charged @ 12.5%.

10 Entry 57 of the H.P. VAT Act, like the Punjab VAT Act, does not provide for and only speaks of mobile handset and not the battery charger, which reads as under:-

> *Telephones, cell phones, tele-printer, wireless equipment and parts thereof, digital video disc and compact disc and information technology products as given hereunder……..*
>
> *(6) (g) cellular phone 8525 heading No.8525.20-17*
>
> *IT products including computer, telephone (mobile hand set, DVD and CD and part thereof)……..*
>
> *Description.*

11 It would be noticed that provisions of Punjab VAT Act are somewhat similar, if not identical to those of the VAT Act of Himachal Pradesh.

12 The contention of the respondents in ***Nokia India Pvt. Ltd's*** case (supra) before the Hon'ble Supreme Court was that the battery charger had not been independently sold and was sold along with the cell phone in same packing and hence,

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tax chargeable was at the rate of 4% and proper tax had been paid and, therefore, there was no 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.

13 On the other hand, the stand of the State-appellant was that 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 @12.5% on the battery chargers sold separately. According to the State, the battery chargers were not covered under Entry No. 60(6)(g) in Schedule 'B' of the Punjab VAT Act and thus liable to be taxed at the rate of 12.5% on its value under Schedule 'F' of the Punjab VAT Act which covers all residuary items not falling in any of the classification of other Schedules of the Act. Dealing with this contention, the Hon'ble Supreme Court ***in Nokia's*** case held as under:-

> *"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 HMS 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

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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."*

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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."

14 It would thus be noted from the aforesaid decisions that:-

(i) the respondent, Nokia India (P) Ltd., a registered dealer under the Punjab Value Added Tax Act, 2005, is engaged in selling cellphones and their accessories;

(ii) the issue in contention is whether a cellphone battery charger, sold in a package, should be considered a part of the cellphone or merely an accessory;

(iii) the Tribunal initially dismissed both appeals, stating that the battery charger is not a part of the cellphone;

(iv) the Division Bench of the High Court later allowed the appeals filed by the respondent, holding that the battery charger is part of the composite package of the cellphone;

(v) the appellant State argued that the battery charger is not part of the cell phone but an accessory, as evidenced by the separate tax paid on chargers sold independently;

(vi) the SC upheld that plea of revenue; and

(vii) mobile/cellphone charger is an accessory to cellphone and is not a part of cellphone and found as a finding of the fact that battery charger cannot be held to be a component part of a cellphone, but is an independent product which can be sold separately without selling a cellphone and therefore, held the rate charged by the revenue to be correct.

15 Since *pari materia* provision has been construed by the Hon'ble Supreme Court, we need not fall back on the

judgments either of the Allahabad High Court or the Karnataka High Court as the provisions of the Act therein were entirely different and the same has been duly noted by the respective courts.

16 In ***M/s Samsung India's*** case (supra), the learned Single Judge of the High Court of Allahabad observed as under:-

> "*19. At the outset the Court notices the submission of Sri Gulati that the issues raised stand concluded in light of the decision of the Division Bench in Samsung. In order to appreciate this submission it would be apposite to extract the following observations from the decision of the Division Bench: -*
>
> *"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. The factual scenario in the case on hand are as under:*
> *(a) The judgment has been rendered in context of Punjab VAT Act. The entry in the Schedule under the Act reads differently and, as such, provisions are different.*
> *(b) The case has been decided on facts of another assessee i.e. Nokia India Pvt. Ltd. And cannot be applied to facts of petitioner which are distinct. Nokia had admitted in its reply to notices and as also before Tribunal in State of Punjab that battery charger is an accessory. It is submitted that it is not case of petitioner that battery*

charger is an accessory and, as such, Nokia judgment does not apply.

(c) The Court in para 17 has noticed Rule 3 (b) of the General Rules of Interpretation of Ist Schedule of Customs Tariff. Rule 3 (b) applies to three distinct categories of goods being mixtures, composite goods consisting of different materials and goods put up in sets for retail sale.

(d) For all three categories, text for classification is that goods are classified as if they consisted of material or component which gives "essential character". The only finding given by the Court is that merely because goods are sold in a composite pack, it does not become "composite goods", perhaps because it was argued that cellphone and battery charger are composite goods. Petitioner in present case has never argued that two are composite goods. Instead it's case is that these goods are put up in sets for retail sale and fall under category (c) noticed above. There is no finding of the Court that if goods fall in category (c), they cannot be classified according to essential character test. By use of words, "as if" Rule 3 (b) applies a fiction by which it is assumed that component which gives essential character is only component which is relevant and common classification of all goods put up in the set has to be classification of component which gives the set its essential character. Undoubtedly, in a set or a composite box containing the cellphone and the battery charger, the essential character of set is that of cellphone and entire set is to be classified as a cellphone.

(e). No argument was raised in Nokia and there is no finding on the issue in that case that there is a legal impossibility of making a separate classification and having a separate value for each component in a composite box containing the cellphone and the battery charger. Under the Legal Metrology Act, the MRP of

product has to be mentioned on the package. Only one MRP of the product can be mentioned on the package and that MRP will be that of entire package. There is no possibility of splitting the value of different products and subjecting them to classification and assessment separately.

(f) There is no mechanism in the Act or Rules to split consideration in the case of a composite contract. Where there is no machinery created under statutory provisions for computation of the tax, it has to be presumed that statute did not contemplate a tax on the subject matter (CC v. Larsen & Toubro, (2016) 1 SCC 170 and CIT v. BC Srinivasa Shetty, (1981) 2 SCC 460). In the present case, neither there is a separate price for the mobile charger nor can it be determined under the Act/Rules and, therefore, it has been merely estimated at Rs.180/- per piece in a most arbitrary manner. As the Act/Rules do not provide for a mechanism to disintegrate a composite contract, no tax can be charged separately on a mobile charger. These arguments were never raised or considered in Nokia's case."

17 Thereafter, after taking note of judgment in ***Nokia's case*** (supra), the court then tried to distinguish the same by observing as under:-

"23. It is pertinent to bear in mind that a decision rendered by a Court primarily has three basic postulates. The first, of course, is the facts in the backdrop of which the decision is rendered. The second comprises of the submissions and the issues of law or fact which are urged for the consideration of the Court. The third pillar of the judgment is the principle of law which the Court ultimately formulates and declares. The quest to discern and identify the ratio of a precedent requires the

judgment to be read in its entirety, not to be misled by every singular observation as also to bear in mind always the factual backdrop in which it comes to be rendered as well as the questions which are raised for the consideration of the Court. The ratio of a decision can neither be culled out nor recognized without due consideration being conferred on the aforementioned factors. While these principles are well settled, it would be relevant to notice the following observations as made by the Supreme Court in Natural Resources Allocation, (2012) 10 SCC 1:-

> *"69. Article 141 of the Constitution lays down that the "law declared" by the Supreme Court is binding upon all the courts within the territory of India. The "law declared" has to be construed as a principle of law that emanates from a judgment, or an interpretation of a law or judgment by the Supreme Court, upon which, the case is decided. (See Fida Hussain v. Moradabad Development Authority [(2011) 12 SCC 615 : (2012) 2 SCC (Civ) 762] .) Hence, it flows from the above that the "law declared" is the principle culled out on the reading of a judgment as a whole in light of the questions raised, upon which the case is decided. [Also see Ambica Quarry Works v. State of Gujarat [(1987) 1 SCC 213] and CIT v. Sun Engg. Works (P) Ltd. [(1992) 4 SCC 363]] In other words, the "law declared" in a judgment, which is binding upon courts, is the ratio decidendi of the judgment. It is the essence of a decision and the principle upon which the case is decided which has to be ascertained in relation to the subject-matter of the decision.*
>
> *70. Each case entails a different set of facts and a decision is a precedent on its own facts; not everything said by a Judge while giving a judgment can be ascribed precedential value. The essence of a decision that binds the parties to the case is the principle upon which the case is decided and for this reason, it is important to analyse a decision and cull out from it the ratio*

decidendi. In the matter of applying precedents, the erudite Justice Benjamin Cardozo in The Nature of the Judicial Process, had said that "if the Judge is to pronounce it wisely, some principles of selection there must be to guide him among all the potential judgments that compete for recognition" and "almost invariably his first step is to examine and compare them;" "it is a process of search, comparison and little more" and ought not to be akin to matching "the colors of the case at hand against the colors of many sample cases" because in that case "the man who had the best card index of the cases would also be the wisest Judge". Warning against comparing precedents with matching colours of one case with another, he summarised the process, in case the colours do not match, in the following wise words:

> *"It is when the colors do not match, when the references in the index fail, when there is no decisive precedent, that the serious business of the Judge begins. He must then fashion law for the litigants before him. In fashioning it for them, he will be fashioning it for others. The classic statement is Bacon's: "For many times, the things deduced to judgment may be meum and tuum, when the reason and consequence thereof may trench to point of estate. The sentence of today will make the right and wrong of tomorrow.'"*

71. With reference to the precedential value of decisions, in State of Orissa v. Mohd. Illiyas [(2006) 1 SCC 275 : 2006 SCC (L&S) 122] this Court observed: (SCC p. 282, para 12)

> *"12. ... According to the well-settled theory of precedents, every decision contains three basic postulates: (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of*

law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment."

73. It is also important to read a judgment as a whole keeping in mind that it is not an abstract academic discourse with universal applicability, but heavily grounded in the facts and circumstances of the case. Every part of a judgment is intricately linked to others constituting a larger whole and thus, must be read keeping the logical thread intact. In this regard, in Islamic Academy of Education v. State of Karnataka [(2003) 6 SCC 697] , this Court made the following observations: (SCC p. 719, para 2)

"2. ... The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment." (emphasis supplied)

24. This settled position has been reiterated more recently by the Supreme Court in Roger Shashoua Vs. Mukesh Sharma,2017 SCC online SC 697

52. At this juncture, we think it necessary to dwell upon the issue whether Shashoua principle is the ratio decidendi of BALCO and Enercon (India) Ltd. (supra) and

we intend to do so for the sake of completeness. It is well settled in law that the ratio decidendi of each case has to be correctly understood. In Regional Manager v. Pawan Kumar Dubey [(1976) 3 SCC 334], a three-Judge Bench ruled:

"7. ... It is the rule deducible from the application of law to the facts and circumstances of a case which constitutes its ratio decidendi and not some conclusion based upon facts which may appear to be similar. One additional or different fact can make a world of difference between conclusions in two cases even when the same principles are applied in each case to similar facts."

54. In this context, a passage from Commissioner of Income Tax v. Sun Engineering Works (P) Ltd. [(1992) 4 SCC 363] would be absolutely apt:

"39. ... It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this Court, divorced from the context of the question under consideration and treat it to be complete "law' declared by this Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. ..."

56. From the aforesaid authorities, it is quite vivid that a ratio of a judgment has the precedential value and it is obligatory on the part of the Court to cogitate on the

judgment regard being had to the facts exposited therein and the context in which the questions had arisen and the law has been declared. It is also necessary to read the judgment in entirety and if any principle has been laid down, it has to be considered keeping in view the questions that arose for consideration in the case. One is not expected to pick up a word or a sentence from a judgment de hors from the context and understand the ratio decidendi which has the precedential value. That apart, the Court before whom an authority is cited is required to consider what has been decided therein but not what can be deduced by following a syllogistic process." (emphasis supplied)

25. As has been succinctly explained in the decisions noticed above, the ratio is the principle deducible from the application of the law to the facts of a particular case and it is this which constitutes the true ratio decidendi of the judgment. Each and every conclusion or finding recorded in a judgment is not the law declared. The law declared is the principle which emerges on the reading of the judgment as a whole in light of the questions raised. It is on these basic principles that the Court proceeds to ascertain the ratio decidendi of Nokia.

26. A careful reading of the entire decision establishes beyond doubt that the Court found that a charger and mobile phone are not composite goods. This evidently because a charger cannot possibly be recognized as an integral part or constituent of a mobile phone. A mobile phone is not an amalgam of various products and a charger. Since the submission advanced before the Court was that these were composite goods, the Supreme Court proceeded to recognize a charger to be an accessory to a mobile phone.

27. The contention which is urged before this Court namely that the sale of the mobile phone along with its charger in a single retail package constitutes a composite contract and requires the application of the dominant intention test was neither urged nor considered by the Supreme Court. The Supreme Court

consequently in Nokia did not record any finding nor did it declare the law to be that the sale of a mobile phone and its charger in a single retail package would not constitute a composite contract. This Court must also necessarily take note of the fact that the circular of the Government of India dated 13 November 2015 as well as the provisions of the 1963 Rules which are noticed in the decision of the Himachal Pradesh Tax Tribunal also do not appear to have been brought to the attention of the Court. The entry of the Punjab VAT Act in the backdrop of which the decision itself came to be rendered is also distinct from the one which stands embodied in the 2008 Act. The distinguishable features of the judgment of the Supreme Court in Nokia was also noticed by the Division Bench in Samsung. The Court must also additionally note that the submissions urged by Shri Gulati namely that a single retail package which bears one MRP cannot be severed and the articles contained therein assessed separately was also one which was neither urged nor canvassed in Nokia and therefore consequently not considered."

18 Be that as it may, we need to notice that the provisions under the U.P. VAT Act, which were under consideration before the learned Single Judge, were entirely different and the same have been reproduced by the Hon'ble Supreme Court while affirming the judgment of the learned Single Judge in Samsung (India)'s case vide its order dated 20.02.2025 passed in SLP No.34086 of 2015 in ***M/s Naresh Kumar Gupta versus State of Punjab and another***, observed as under:-

"We have heard Sri Bhakti Vardhan Singh, learned counsel, who strenuously argued and placed reliance on

the judgment of this Court in the case of State of Punjab others vs. Nokia India Private Limited (2014) 16 SCC 410.

We have considered the said judgment relied upon by learned counsel for the petitioner(s) in light of Entry 28 Part B Schedule II of the Uttar Pradesh Value Added Tax Act, 2007, which, for the sake of immediate reference, is extracted and reads as under:

	SCHEDULE-II
	PART-B *List of IT Products taxed at 5%*
28	*Cell Phones and its parts but excluding Cell Phones with M.R.P exceeding rupees ten thousands.*

We have heard learned counsel for the respondent(s)- assessees, who have supported the impugned judgment and have contended that the judgment of the Allahabad High Court is just and proper and has correctly distinguished the judgment of this Court in Nokia India Private Limited's case (supra). It was submitted that when a cell phone is sold along with a charger, there is only one Maximum Retail Price (MRP) stated on the packaging and therefore, Entry 28 has to be read in the context of the said facts.

We have considered the arguments advanced at the bar, in light of the judgment of this Court in Nokia India Private Limited's case (supra) and in light of the detailed discussion made by the High Court distinguishing the aforesaid judgment.

We do not find any reason to interfere with the impugned order.

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Hence, the Special Leave Petitions are dismissed.

We clarify that this order is not applicable to a case where a charger is sold de hors a mobile phone and separately by itself.

In view of the aforesaid order, the applications seeking condonation of delay in filing the Special Leave Petitions and other pending application(s), if any, shall stand disposed of."

19 In the case before the Allahabad High Court, Entry No.28 of the U.P. VAT Act was under consideration which provides "cell phones and its parts but excluding cellphones with MRP exceeding Rs.10,000/-" and the VAT charged was @4%, therefore, the plea of the U.P. State that the charger should be charged at higher rate was held to be misconceived, as a charger was part of the cellphone. The petitioner therein, a prominent manufacturing company was engaged in the production of consumer electronics, IT, and telecom products, operates multiple offices across India. The petitioner therein had filed a writ petition challenging two notices issued under the U.P. VAT Act on February 2, 2016 and March 18, 2016. These notices were issued for reassessment of tax liability for the same period and products previously assessed by the tax department. The impugned order resulting from these notices was passed on March 30, 2016.

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20 The pivotal issue before the Allahabad High Court revolved around whether a mobile charger, when sold as part of a composite package with a mobile phone, could be made subject to separate taxation under the U.P. VAT Act, 2008. The Department contended that the charger should be taxed separately based on the judgment of Hon'ble Supreme Court in ***Nokia's case*** (supra) whereas the petitioner argued that the composite package should be treated as a single entity for tax purposes. It was in this background that the aforesaid judgment was passed by the Allahabad High Court.

21 As regard the view taken by the Karnataka High Court, it again needs to observed that the provisions under consideration before the said court were entirely different.

22 In ***State of Karnataka*** (supra), the Karnataka High Court in para Nos. 8 to 10 of the judgment, has noticed as under:-

> *"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 MATTERS Compact Disc and Information Technology products as given hereunder -*

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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 Hon'ble Supreme Court of India has upheld Revenue's contention in that case because Entry 60(6)(g) of Schedule B of the Punjab STRP NO. 08 OF 2022 AND CONNECTED MATTERS VAT Act does not mention accessories for the purpose of taxing the items/product at 4%."

23 As regards the provisions of Karnataka VAT Act, the same were reproduced in paras No. 11 to 13 of the judgment, which read as under:-

> *"11. Now, we shall analyse Entry 53 of Schedule III of the KVAT Act read with the Notification No. FD 43 CSL 07(02) 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. FD 43 CSL 07(02) 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 the CET Act in short the CT Act in short STRP NO. 08 OF 2022 AND CONNECTED MATTERS local or wide area network) and parts thereof, but excluding attachments and transmission or reception apparatus of heading 8843,8525,8527 or 8528."*

24 However, judgment in ***Nokia's case*** (supra) has been construed and thereafter reflected in paras 14 to 16, which read as under:-

> *"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."

15. In Madhav Rao Jiwaji Rao Scindia Bahadur and Ors. Vs. Union of India MANU/SC/0050/1970: 1971 SCR (3) 9, 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?"

25 Thereafter, after placing reliance on the judgment passed by the learned Single Bench of Allahabad High Court, it has been observed in paras No. 25 to 27 as under:-

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“25. 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 chargable at 5%. This view is in consonance with the law laid down by the Apex Court in CIT Vs. B.C. Srinivasa Setty MANU/SC/0285/1981 : (1981) 5 Taxmann 1 (SC), 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:

> *"10. ...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..."

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."

26 It would be evidently clear from the judgment passed by the Karnataka High Court that the same has been passed after taking into consideration the provisions of Karnataka VAT Act, more particularly, Entry No. 53 of Schedule III, which reads as under:-

IT Products including telecommunication equipments as may be notified covered with the notification dated 01.04.2007.

27 As already extracted above, it provides for telephone sets, including telephones cellular networks, or for other wireless networks. Therefore, judgment is of no avail to the respondent.

28 In addition to the aforesaid, we may notice that the Division Bench in aforesaid case had failed to notice number of judgments rendered by learned Single Judge of the same High Court in a **writ petition No.55790-801/2016(T-RES)** in

case titled as ***M/s Lava International Ltd. versus State of Karnataka and others***, decided on 10.11.2016 upholding the separate rate of tax on the 'Mobile Battery Chargers' (MBC) sold alongwith the mobile phones itself, under the provisions of the Karnataka Value Added Tax act, 2003, ('KVAT Act, 2003') following the judgment of Hon'ble Supreme Court in ***Nokia's case*** (supra) and it was held as under:-

> *"3. The main question involved in the present case is also about the rate of tax applicable under the Karnataka Value Added Tax Ac, 2003, on the sale of mobile battery chargers, which are sold in the same package as the mobile phones and separately also. As far as this issue is concerned, that is no longer res integra, as the same has been decided by the Hon'ble Supreme Court in the case of* ***State of Punjab and others versus Nokia India Private Limited*** *MANU/SC/1178/2014: (2015) 77 VST 427 (SC), which was quoted in the revised proposition notice itself by the respondent-Assessing Authority and the same is again quoted herein below for ready reference;*
>
> > *"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. Further, 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*

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> *common parlance also, the mobile battery charger is understood as an accessory. It has also been noticed 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 .... and*
>
> *"....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 composite part of the cell phone but is an independent product which can be sold separately, without selling the cell phone."*

29 Therein also, the petitioner had sought to raise contention that the entry under the Punjab Act was different from the KVAT Act, 2003 and since entry in question is adopted from Central Excise law, therefore, according to the Rules of interpretation under Excise law, the Mobile Battery Chargers (MBC) sold alongwith the mobile phones, in one retail package should be treated as taxable at the same rate as the mobile phone itself under the Third Schedule to the KVAT Act, 2003 at the rate of 4% only. This contention was rejected as being not sound as the ratio of Hon'ble Supreme Court decisions cited in ***Nokia's case*** is very clear that the Mobile Battery Chargers (MBC) cannot be treated as part of the mobile phones itself and the battery is only accessory of the mobile phone and are to be taxed separately irrespective of their packing in the common

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package with mobile phone. It was further held that the judgment of Hon'ble Supreme Court is binding on all Courts/ authorities in the Country. It was further held that the judgment was not based on particular entry for tax rate under any particular State. Therefore, court was not inclined to entertain this contention of the assessee.

30 The essential character test, legal and functional analysis are as follows:-

A. Classification Hierarchy under Customs Rules:

Rule	**Application**	**Relevance to present case**
Rule 3(a)	Primary classification by HSN (Harmonised System of Nomenclature) codes	Phones (8517) and chargers (85044030) have distinct codes under the Custom Tariff Act
Rule 3(b)	Residual application only	Inapplicable when specific codes exist

B. Functional and Commercial Reality:

Interchangeability:

i) Chargers work across multiple phone models.

ii) Phones can be charged through various methods (for eg, by using USB, power banks)

I. Refutation of Essential Character Test (Rule 3(b))

Rule 3 of the General Rules for the interpretation of the harmonized system reads as follows:-

3) When by application of Rule 2(b) or for any other reasons, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:

(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.

(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 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

31. A bare perusal of the Rule 3(a) shows that when a specific entry is available the commodity has to be considered under the specific category/entry for all intents and purposes. Even in the commodity classification under the Custom Tariff Act, chargers and mobiles are classified under different heads and have different distinct codes.

32 Moreover, Rule (3) (b) in the Allahabad case, could not have been relied upon by the petitioner therein because Rule (3) (b) would only be applicable if there is no specific entry with regard to products and they are being sold together in a retail package. However, that is not the case with chargers and phones as they have distinct codes, therefore, relying on rule (3) (b) is flawed. These observations are in consonance with the judgment of the Hon'ble Supreme Court in the ***Nokia's case*** that has stated that charger is an independent product and is a mere "accessory to the phone." This shows that the Custom Tariff Act, 1975 entries and the Hon'ble Apex Court judgment in the ***Nokia's case*** are in tandem and consonance with each other. Moreover, applying the rules of interpretation of custom duty (rule 3) on state excise is an exercise done arbitrarily. Such reliance defeats the purpose of residual entries. This would encourage unscrupulous companies to resort to packaging different commodities under the same retail package thereby bypassing the residual entries and defeating their significance. This would become a tax evasion tactics. The phrase 'goods sold in sets for retail' can be exploited by companies to evade the residuary tax. The 'goods sold in sets for retail' has to qualify some form of test of being composite or the part of the main product. That is not the case

in a mobile and a charger as has been conclusively held by the Hon'ble Supreme Court in ***Nokia's case***.

33 Further, even if the customs tariff interpretation rule 3 is followed, even then the battery charger and mobile phones have distinct HSN code under the Custom Duty Tariff Act 1975, therefore, rule 3b won't be applicable. It can therefore be stated that the essential test argument relied on in the Allahabad High Court case was advanced relying on rule 3b. However, when rule 3a holds ground, no reliance can be placed on 3b and the subsequent essentiality test becomes void and futile.

34 As regards, the office memo dated 30.11.2015, the same at best can be said to be prospective as is evident from the bare reading of aforesaid memo, which reads as under:

> ***"OFFICE MEMORANDUM***
>
> ***Subject: Accessories clarification-interpretation by some State Governments on a point of Hon'ble Supreme Court judgment 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 Spreme 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, 19630 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.

Sd/-
(Mahendra Nath)
Under Secretary to the Govt. of India"

35 Moreover, there is nothing on record to indicate that on the basis of aforesaid memo, the provisions of VAT Act had been amended in the State of H.P.

36 As regards the dominant nature test as heavily stressed upon by learned counsel for the respondent and taken note in the case before Allahabad High Court, is conceptually flawed in application. The dominant nature test or "degree of intention" or overwhelming component test or decree of labour and service tax came to be developed with the progress of law and applies to dominant composite contracts goods plus service tax, as evolved over to determine whether the contract is a work contract or a contract for sale of goods or both. Whether the contract could be treated as divisible or not.

37 In the instant case what is sold is a phone with the charger which is a pure sale of goods and containing no self-

service element. It is common knowledge that today majority of the mobiles are being sold with charger and wherever we have two different products being sold in same retail package, it essentially attracts different rates of tax and the following example could be illustrative on the subject:-

Product Bundle	**Tax Treatment**	**Rationale**
Toothbrush+ Paste	Separate taxation	Different HSN codes
Camera+ Lens Kit	Separate taxation	Lens is accessory
Phone + Charger	Should be separate	Parallel to above

38 As regards the judgments passed by Division Bench of this court and authored by one of us (Justice Tarlok Singh Chauhan) in **Nokia India Sales Pvt.Ltd. versus Excise and Taxation Commissioner, 2017 (VIL) 16 TRV**, no doubt, this court had observed that in the given facts and circumstances, the order passed by learned Tribunal on 14.06.2017 is neither erroneous nor does it amount to non-decision of question of fact but evidently, the civil revision was dismissed on technical grounds of being barred by limitation and therefore, cannot be treated to be binding precedent upon this court.

39 Questions of law are answered accordingly in favour of the Revenue/State by concluding that-

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(a) the learned Tribunal failed to appreciate the entries made in the Schedules of the H.P. VAT Act, 2005 in respect of goods/ articles/commodities/ items to be taxed as per the rates prescribed in the Schedules appended to the H.P. VAT Act, 2005 in its right perspective and thereby reached at a wrong conclusion.

b) The learned Tribunal wrongly interpreted the judgment in ***Nokia India's case*** and thereby, reached at a wrong conclusion.

c) The order passed by the learned Tribunal is perverse and contrary to the provisions of law laid down in the VAT Act and law settled by the Hon'ble Supreme Court in ***Nokia India's case***.

d) The learned Tribunal has wrongly treated the mobile battery charger taxable @5% instead of 13.75%.

e) The learned Tribunal was not justified in passing the impugned order ignoring entry No. 60(f)(vii) of part-II A of schedule-A of the H.P.Vat Act, 2005 which does not include mobile charger and other accessories.

f) The learned Tribunal erred in not considering the cellphone charger as an accessory to the cellphone and is not a part of the cellphone. Therefore, battery charger cannot be held to be a composite part of cellphone but is an

independent product which can be sold separately without selling the cellphone.

39 In view of the aforesaid discussions, we find merit in the instant petition and the same is accordingly allowed. Consequently, the impugned orders dated 9.6.2022 passed by the H.P. Tax Tribunal (in Appeal Nos.21 & 22/2018) are set aside. Pending application(s), if any, also stands disposed of.

(Tarlok Singh Chauhan)
Judge

(Sushil Kukreja)
Judge

10.04.2025
(pankaj/ yogesh)