IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 03rd DAY OF JANUARY 2017

BEFORE

THE HON'BLE Dr.JUSTICE VINEET KOTHARI

WRIT PETITION Nos.29945-956/2016 (T-RES)

BETWEEN:

M/s. S & S Co., HAVING ITS OFFICE AT AIKON
No.693, CELLAR FLOOR
VISHWAMANAVA DOUBLE ROAD
SARASWATHIPURAM, MYSORE-570 009
REP. BY ITS PROPRIETOR
Mr. B.C. SATISH KUMAR
S/O Mr. B.E. CHANDRASHEKAR
AGED ABOUT 44 YEARS.

…PETITIONER

(BY SRI. HARISH V.S. ADV.)

AND:

1. THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES
   (AUDIT) -- 4, SHESHADRI IYER BHAVAN
   DIWAN ROAD, MYSORE-570 024.

2. THE COMMISSIONER OF COMMERICAL TAXES
   STATE OF KARNATAKA
   VANIJYA TERIGE KARYALAYA
   GANDHINAGAR, BANGALORE – 560 009.

3. THE STATE OF KARNATAKA
   DEPARTMENT OF FINANCE
   VIDHANA SOUDHA, AMBEDKAR VEEDHI
   BANGALORE – 560 001
   REP. BY ITS PRINCIPAL SECRETARY.

…RESPONDENTS

(BY SRI. T.K. VEDAMURTHY, AGA)

THESE W.Ps. ARE FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE IMPUGNED ORDER PASSED BY R-1 U/S 39(1), 36 AND 72(2) OF THE KVAT ACT, R/W RULE 46 OF THE KVAT RULES, DATED 19-03-2016 FOR THE ASSESSMENT PERIOD APRIL 2009 TO MARCH 2010 AND THE CONSEQUENTIAL DEMAND NOTICE ISSUED BY R-1 IN VAT FORM 180, DATED 19-03-2016 FOR THE ASSESSMENT PERIOD APRIL 2009 TO MARCH 2010 I.E., ANNEX-C AND C1 AND ETC.,

THESE W.Ps. COMING ON FOR PRELIMINARY HEARING THIS DAY, THE COURT MADE THE FOLLOWING:-

ORDER

Mr. Harish V.S. Adv. for Petitioner
Mr. T.K. Vedamurthy, AGA for Respondents

1. The controversy in the present cases is squarely covered by the decision of this Court rendered in the recent past *on **10/11/2016** in the case of **M/s. LAVA INTERNATIONAL LIMITED Vs. STATE OF KARNATAKA AND OTHERS in Writ Petition Nos.55790-801/2016 (T-RES),*** upholding the separate rate of tax on the '**Mobile Battery Chargers'** (MBC) sold along with the Mobile phones itself, under the provisions of the Karnataka Value Added Tax Act, 2003, ('**KVAT Act, 2003'** for short), following the Supreme

Court decision in the case of ***State of Punjab and others –versus- Nokia India Private Limited (2015)77 VST 427(SC)***.

2. This Court at paragraph 3 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 (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 batter 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 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. <u>We further hold that the battery charger cannot be held to be composite part of the cell phone but is an independent product</u> which can be sold separately, without selling the cell phone." ***(emphasis supplied)***

3. The learned counsel for the petitioner further sought to still raise a contention that the entry under

the **Punjab Act** was different from the **KVAT Act, 2003**, and here 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 along with 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.

4. This contention does not appear to be sound as the ratio of the Hon'ble Supreme Court decisions cited above in the case of ***Nokia India Pvt.Ltd.*** is very clear that the Mobile Battery Chargers (MBC), cannot be treated as part of the Mobile Phones itself and they are mere accessories of the Mobile Phone and are to be taxed separately irrespective of their packing in the common package with Mobile phones.

5. The said binding precedent from the Apex Court is binding on all Courts/authorities in the Country. It is not based only on particular entry for tax rate under any particular State. Therefore, this Court is not inclined to entertain this contention of the assessee. The other issues of assessment have already been left open to be raised before the appellate authorities under the Act, as the petitioner has an alternative remedy against the impugned assessment orders and therefore they have been left free to agitate those points before such appellate authorities.

6. In view of this, the present writ petitions are dismissed. No Costs.

Sd/-
JUDGE

Srl.