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**IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 10TH DAY OF FEBRUARY, 2023**

PRESENT

**THE HON'BLE MR. JUSTICE P.S.DINESH KUMAR
AND**

THE HON'BLE MR. JUSTICE T.G.SHIVASHANKARE GOWDA



STRP NO. 8 OF 2022

C/W

STRP NO. 9 OF 2022, STRP NO. 10 OF 2022
STRP NO. 11 OF 2022, STRP NO. 14 OF 2022
STRP NO. 15 OF 2022, STRP NO. 16 OF 2022
STRP NO. 17 OF 2022, STRP NO. 18 OF 2022
STRP NO. 19 OF 2022, STRP NO. 20 OF 2022
STRP NO. 21 OF 2022, STRP NO. 22 OF 2022
STRP NO. 23 OF 2022, STRP NO. 24 OF 2022
STRP NO. 25 OF 2022, STRP NO. 26 OF 2022
STRP NO. 35 OF 2022, STRP NO. 37 OF 2022
STRP NO. 38 OF 2022, STRP NO. 39 OF 2022
STRP NO. 40 OF 2022, STRP NO. 43 OF 2022
STRP NO. 44 OF 2022, STRP NO. 49 OF 2022
STRP NO. 51 OF 2022, 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
(AUDIT 3.1), 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

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SHANTHINAGAR
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.
REP. BY ITS MANAGER

...RESPONDENT

(BY SHRI. S.GANESH, ADVOCATE)

THIS STRP IS FILED UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 10.03.2021 PASSED IN STA NOS.88 TO 91/2018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEALS AND SETTING ASIDE THE ORDER DATED 22.12.2017 PASSED IN VAT.AP 34 TO 37/16-17 (A.Y.2010-11 TO 2013-14) ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES APPEALS-3, BENGALURU, DISMISSING THE APPEALS FILED UNDER SECTION 62(1) OF THE KVAT ACT, 2003 AGAINST THE RE-ASSESSMENT ORDER DATED 30.06.2016 PASSED BY DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-3.1) DVO-3 BENGALURU, UNDER SECTION 69(1) OF THE KVAT ACT 2003 FOR THE YEAR 2010-11 TO 2013-14.

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)

AND:

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 DATED 17.08.2022 IN STRP No.8/2022 SERVICE TO
RESPONDENT IS HELD SUFFICIENT)

THIS STRP IS FILED UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 10.03.2021 PASSED IN STA 185 TO 187/2017 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEALS AND SETTING ASIDE THE ORDER DATED 27.01.2017 PASSED IN VAT.AP 44/16-17, VAT AP NO.45/16-17 AND VAT AP 46/16-17 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES APPEALS-6, BENGALURU, DISMISSING THE APPEALS FILED AGAINST THE RE-ASSESSMENT ORDER DATED 13.07.2016 AND 14.07.2016 PASSED BY DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT- AND RECOVERY 6.9) DVO-6, BENGALURU U/S 39(1) 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 MARCH 2011, APRIL 2012 TO MARCH 2013 AND APRIL 2013 TO MARCH 2014, 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

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3. 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 SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 10.03.2021 PASSED IN STA 134/2016 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL AND AGAINST THE IMPUGNED ORDERS DATED 30.11.2015 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 03.07.2015 PASSED BY THE COMMERCIAL TAX OFFICER, DVO-1, BENGALURU, FILED UNDER SECTION 39(2) R/S 36(1)/37 OF KARNATAKA VALUE ADDED TAX ACT 2003, FOR TAX PERIOD 01.04.2008 TO 31.03.2009.

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.

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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. 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 SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 10.03.2021 PASSED IN STA NOS.298/2018 AND 299/2018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEALS AND SETTING ASIDE THE IMPUGNED ORDER DATED 26.05.2018 PASSED IN VAT AP. 01/17-18 (AY 2010-11) AND VAT AP.02/17-18 (AY 2012-13) ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS-3) BENGALURU, DISMISSING THE APPEALS AND UPHOLDING THE RE-ASSESSMENT ORDER DATED 13.03.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT) 3.3., DVO-3, BENGALURU FILED UNDER SECTION 39(1) R/W SEC.36 AND 72(2) OF KVAT ACT 2003 FOR THE TAX PERIOD OF APRIL 2012 TO MARCH 2013.

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 AND 1.3
DVO-1, 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-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 10.03.2021 PASSED IN STA NOS. 271 TO 274 AND 302/2016 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEALS FILED AGAINST IMPUGNED ORDER DATED 30.04.2015 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 ORDERS DATED 10.12.2015 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

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 SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 10.03.2021 PASSED IN STA NO. 260/2017 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL FILED AGAINST THE IMPUGNED ORDER DATED 28.02.2017 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 DATED 01.03.2016 PASSED BY ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT 54), DVO-5, BENGALURU, FILED UNDER SECTION 39(1) OF KVAT ACT 1956 R/W RULE 37(2) FOR KVAT RULES 2005 FOR THE AY 2009-10.

IN STRP NO. 16 OF 2022

BETWEEN :

1. THE STATE OF KARNATAKA
REPRESENTED THROUGH
THE JOINT COMMISSIONER
OF COMMERCIAL TAXES
(ADMINISTRATIVE), DVO-06
KIADB BUILDING
14TH CROSS, PEENYA
BENGALURU-560 058

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2. 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 SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 10.03.2021 PASSED IN STA 380/2016 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE ORDER DATED 30.01.2016 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 DATED 22.09.2012 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-24), BENGALURU FOR THE TAX PERIODS OF APRIL 2010 TO MARCH 2011.

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

BMTC BUILDING, K.H.ROAD
SHANTHINAGAR
BENGALURU-27

...PETITIONERS

(BY SHRI. JEEVAN J. NEERALGI, AGA)

AND:

M/s. REDINGTON INDIA LTD.
"SHREE NARAYAN TOWER"
5TH SECTOR, NO.144
1ST AND 2ND 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 SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 10.03.2021 PASSED IN STA NO. 536, 537 AND 538/2017 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)

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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
12TH 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 ORDERS 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 ORDERS DATED 10.12.2015, ORDERS REJECTING THE RECTIFICATION APPLICATIONS DATED 15.09.2016 AND RE-ASSESSMENT ORDERS 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

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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 DATED 10.03.2021 PASSED IN STA NOS. 389, 417 AND 471/2016 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEALS AND FILED AGAINST THE ORDER DATED 22.03.2016 PASSED IN VAT AP. NO. 171/15-16 AND ORDER DATED 29.03.2016 PASSED IN VAT.AP.NO.183/15-16 AND ORDER DATED 27.04.2016 PASSED IN VAT APPELLANT NO.01/16-17 DISMISSING THE APPEALS AND UPHOLDING THE RE-ASSESSMENT ORDER DATED 21.11.2015, 06.02.2016, 31.01.2016 AND 21.03.2016 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT) DVO-1, BENGALURU FILED UNDER SECTION 39(1) AND 39(2) OF KVAT ACT 2003 FOR THE TAX PERIOD OF APRIL 2014 TO MARCH 2015, MAY 2008 TO MARCH 2009 AND APRIL 2009 TO MARCH 2010 RESPECTIVELY.

IN 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)

THIS STRP IS FILED UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 20.04.2021 PASSED IN STA NO. 82/2019 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL FILED AGAINST THE IMPUGNED ORDER DATED 26.12.2018 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 DATED 07.12.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.1) BENGALURU, FOR THE TAX PERIODS APRIL 2013 TO MARCH-2014 U/S 69(1) OF THE KVAT ACT ON THE ORDR PASSED U/S 39(1) OF THE KVAT ACT BY THE AA DATED 30.11.2017.

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 FLOOR
46TH CROSS
JAYANAGAR 5TH BLOCK

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BENGALURU-560 011.
REPRESENTED BY ITS
MANAGER

...RESPONDENT

(BY SHRI. VENKATESH S.ARABATTI, ADVOCATE)

THIS STRP IS FILED UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 10.03.2021 PASSED IN STA NOS. 309 AND 310/2018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL FILED AGAINST THE IMPUGNED ORDER DATED 15.06.2018 PASSED IN VAT AP NO. 13/2018-19 AND 14/18-19 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS-3) BENGALURU, DISMISSING THE APPEAL, FILED BY THE APPELLANT BY UPHOLDING THE IMPUGNED ORDERS DATED 13.03.2018 AND 14.03.2018 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-3.7) DVO-3, BENGALURU U/S 39(1) OF THE KVAT ACT, 2003 FOR THE YEARS 2013-14 AND 2014-15.

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

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BHAVANINAGAR, SUDDAGUNTE PALYA
BENGALURU-560 029.
REP. BY ITS MANAGER

...RESPONDENT

(BY SHRI. RAVI RAGHAVAN, ADVOCATE)

THIS STRP IS FILED UNDER SECTION 65(1) 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 ORDERS 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 39(1), 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)

AND:

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 SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 27.08.2021 PASSED IN STA NO. 364/2018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE THE IMPUGNED ORDER DATED 27.08.2018 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 DATED 24.05.2017 PASSED BY THE ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (AUDIT)2.5, DVO-02, BANGALORE UNDER SECTION 39(1) R/W SECTIONS 36 AND 72(2) OF THE KVAT ACT 2003, FOR THE ASSESSMENT YEAR FROM APRIL 2014 TO MARCH 2015.

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

17

DEPARTMENT 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 SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 10.03.2021 PASSED IN STA NO.383/2018 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL PETITION FILED AGAINST THE ORDERS DATED 22.09.2018 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 ORDERS DATED:28.02.2017, PASSED BY THE COMMERCIAL TAX OFFICER (AUDIT-4.3) BENGALURU, UNDER SECTION 9(2) OF CENTRAL SALES TAX ACT R/W 69(1), OF THE KVAT ACT, 2003 FOR THE TAX PERIODS APRIL 2012 TO MARCH 2013.

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

18

SHANTHINAGAR
BENGALURU-560 027.

...PETITIONERS

(BY SHRI. JEEVAN J. NEERALGI, AGA)

AND:

M/S. REDINGTON INDIA LTD.
"SHREE NARAYAN TOWER"
5TH SECTOR, NO.144
1ST AND 2ND 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 SECTION 65(1) OF KARNATAKA VALUE ADDED TAX 2003 AGAINST THE JUDGMENT DATED 10.03.2021 PASSED IN STA NO. 153/2019 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL PETITION FILED AGAINST THE IMPUGNED ORDER DATED 01.03.2019 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 DATED 21.02.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT-4.5) BENGALURU, U/S 39(2) OF THE KVAT ACT 2003, FOR THE TAX PERIOD APRIL 2010 TO MARCH 2011.

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)

19

DVO-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 ACT 2003, AGAINST THE JUDGMENT DATED 20.04.2021 PASSED IN STA NOS. 210 TO 213/2019 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BANGALORE, ALLOWING THE APPEALS FILED AGAINST THE IMPUGNED ORDERS NOS.VAT.AP.79/2017-18, DATED 24.04.2019 CST.AP.05/2017-18 DATED 24.04.2019 VAT AP.80/2017-18, DATED 24.04.2019, CST.AP.06/2017-18, DATED 24.04.2019 PASSED BY THE JOINT COMMISSIONER OF COMMERCIAL TAXES, (APPEALS)-3, SHANTHINAGAR, BENGALURU. PARTLY ALLOWING THE APPEALS BY SETTING ASIDE THE IMPUGNED ORDERS DATED 21.10.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES, (AUDIT)-3.3, BENGALURU FOR THE TAX PERIODS 2012-13 AND 2013-14 U/S.39(1) OF THE KVAT ACT AND SECTION 9(2) 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

20

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
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.

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 DATED 17.12.2021 PASSED IN STA NO.281/2017, ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE ORDER DATED 19.04.2017 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 DATED 27.02.2016 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT 4) DVO, MANGALURU, FILED UNDER SECTION 39(1) OF KVAT ACT 2003 FOR THE TAX PERIOD OF THE YEAR 2011-12.

IN 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.

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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. 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

KORAMANGALA
BENGALURU-560 034.
REPRESENTED BY
MR. ANIL GUPTA
-MANAGER ACCOUNTS

...RESPONDENT

(BY SHRI. P.B.HARISH, ADVOCATE)

THIS STRP IS FILED UNDER SECTION 65(1) OF KARNATAKA VALUE ADDED TAX ACT, 2003 AGAINST THE COMMON JUDGMENT DATED 14.01.2022 PASSED IN STA NOS.262/2017, 264/2017 AND 266/2017 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, ALLOWING THE APPEALS AND SETTING ASIDE ORDERS i.e. DATED 28.02.2017 PASSED IN CST.AP.53/2015-16 ON THE FILE OF THE JOINT COMMISSIONER OF COMMERCIAL TAXES (APPEALS)-4, BENGALURU DISMISSING THE APPEAL UNDER SECTION 9(2) 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

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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 2003 AGAINST THE ORDER DATED 29.11.2021 PASSED IN STA NO. 179/2020 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE THE ORDER DATED 16.03.2020 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 DATED 26.12.2017 PASSED BY THE DEPUTY COMMISSIONER OF COMMERCIAL TAXES (AUDIT(2.3)) BENGALURU AND FOR THE TAX PERIODS FROM APRIL 2012 TO MARCH 2013.

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

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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)

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 DATED 29.11.2021 PASSED IN STA NO. 178/2020 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL AT BENGALURU, ALLOWING THE APPEAL AND SETTING ASIDE THE ORDER DATED 16.03.2020 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 DATED 26.12.2017 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 BUILDING
2ND FLOOR, SHANTHINAGAR
BENGALURU-560 027.

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2. 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

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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.

2. 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.

IN STRP NO. 51 OF 2022

BETWEEN:

1. THE JOINT COMMISSIONER
OF COMMERCIAL TAXES (APPEALS-4)
TTMC, BMTC BUILDING
2ND 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 4.3, DVO-4, KORMANGALA, BENGALURU, FILED UNDER SECTION 62(6) OF THE KVAT ACT 2003 FOR THE TAX PERIOD OF APRIL 2012 TO MARCH 2013.

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.

THESE STRPs HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.11.2022 COMING ON FOR PRONOUNCEMENT OF ORDERS 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

cannot 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).

4. 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. FD 43 CSL 07(02) 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

- the issue involved in these petitions are covered by the authority in *State of Punjab & Others Vs. Nokia India Pvt. Ltd*⁷ (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 Gujarat*⁸ has no relevance;
- the decision in *Samsung (India) Electronics Pvt. Ltd. Vs. State of UP*⁹ (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) SCC 410, para 19

⁸ 2020 (2) TMI 1247

⁹ (2017) 77 Taxman.com 219 (All)

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similar to the facts in *Nokia India Case*. In the *Samsung India Case*, the Hon'ble 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;

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- 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 assesseees, 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

- 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

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

- the Allahabad High Court in *Samsung India case*, under similar circumstances, has distinguished the decision of Hon'ble 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 Hon'ble 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

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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 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

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. 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

¹⁴ the CET Act in short

¹⁵ the CT Act in short

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local 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)

15. In *Madhav Rao Jiwaji Rao Scindia Bahadur and Ors. Vs. Union of India*¹⁶, 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 SCC 410, could not have been followed so as to invoke the

¹⁶1971 SCR (3) 9

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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,

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.

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*(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.

23. In *BSNL v. Union of India*¹⁷, relied upon by the assesseees, 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 Assesseees' 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 SCC 1

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 chargeable at 5%. This view is in consonance with the law laid down by the Apex Court in *CIT Vs. B.C. Srinivasa Setty*¹⁸, 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)

"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..."

(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

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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