

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**Civil Revision No. 10 of 2023.**

**Date of Decision : 27<sup>th</sup> July, 2023**

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**State of Himachal Pradesh and others** ..... **Petitioners.**

***Versus***

**M/s Nokia India Sales Pvt. Ltd.** ..... **Respondent.**

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*Coram:*

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

**The Hon'ble Mr. Justice Satyen Vaidya, Judge**

*Whether approved for reporting?<sup>1</sup> No*

For the Petitioners : Mr. I.N. Mehta, Senior Additional Advocate General with Mr. Ramakant Sharma, Ms. Sharmila Patial, Additional Advocates General, Mr. J.S. Guleria, Ms. Priyanka Chauhan, Deputy Advocates General, Mr. Rajat Chauhan, Law Officer and Mr. Rakesh Sharma, Advocate.

For the Respondent : Mr. Krishna Rao and Mr. Jyotirmay Bhatt, Advocates.

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**Tarlok Singh Chauhan, Judge** (oral)

Heard. By way of instant revision petition filed under Section 48(1) of the Himachal Pradesh Value Added Tax Act, 2005 (for short 'HP VAT Act'), petitioners seek to assail order dated 14.06.2017, passed in Appeal No.10 of 2016 and order dated

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<sup>1</sup>Whether reporters of Local Papers may be allowed to see the judgment?

28.5.2022, passed in Rectification Application No.3/2018 by the Himachal Pradesh Tax Tribunal, Dharamshala (Camp at Shimla) (for short 'the Tribunal').

2. The brief facts of the case are that the respondent/dealer M/s Nokia India Sales Pvt. Ltd. is registered under the H.P. VAT Act, 2005, vide Tin No.02020500871 with the Excise and Taxation Department and is engaged in the sale of mobile/cell Phones, electronic and electrical goods. The Deputy Excise and Taxation Commissioner, Flying Squad South Zone, Parwanoo-cum-Assessing Authority passed composite order dated 16.04.2015, for the period 01.01.2013 to 30.11.2014, whereby demand of Rs. 52.15 lacs was created against the dealer on account of differential amount of tax under the H.P. VAT Act, 2005.

3. Petitioner No.3, i.e., the Deputy Excise and Taxation Commissioner-cum-Assessing Authority, FS Parwanoo vide its order dated 13.05.2015, placing reliance on the judgment passed by the Hon'ble Supreme Court of India in C.A. Nos 11486-11487/2014, titled as ***State of Punjab Vs Nokia India Pvt. Ltd. AIR 2015 SC 1068*** held that the mobile/cell phone charger is an accessory to cell phone and is not a part of the cell phone thus, liable to VAT at general rate 12.5%. Further, the DETC-cum-Assessing Authority held that since the respondent/dealer was selling charger separately,

therefore, it was required to pay separate VAT rate @13.75% on the chargers. The respondent/dealer had paid VAT on the chargers @5% during the above assessment years and hence the DETC had directed it to pay the balance amount of Tax @8.75% alongwith the interest vide its order dated 16.04.2015.

4. The respondent/dealer had resisted the imposition of VAT @13.75% on the ground that the charger was part of the mobile phone and the same when sold alongwith the mobile phone could only be charged @5% which was the rate of VAT being charged on the mobile phone sets. However, vide assessment order dated 16.04.2015 passed under Section 60 of the H.P. VAT Act, 2005, petitioner No. 3, i.e., DETC confirmed differential VAT liability amounting to Rs. 52.15 lacs on the sale of cell phone chargers separately, sold alongwith cell phones in retail packs during the period 01.01.2013 to 30.11.2014.

5. The respondent/dealer thereafter challenged the above order before the Excise and Taxation Commissioner-cum-Appellate Authority who vide its order dated 16.12.2015 (Annexure P-4) dismissed the appeal and upheld the order of petitioner No. 3, i.e., DETC, Flying Squad, Parwanoo.

6. The respondent/dealer thereafter filed the second appeal before the H.P. Tax Tribunal against the order of Excise and

Taxation Commissioner and the learned Tribunal vide order dated 14.06.2017 (Annexure P-1) allowed the appeal and quashed and set aside the order of DETC, FS, Parwanoo dated 16.04.2015 and order of first Appellate Authority dated 16.12.2015.

7. The petitioners thereafter preferred the Rectification Application under Section 47(1) of the HP VAT Act, 2005 before the HP Tax Tribunal for rectification of order dated 14.06.2017 passed in appeal No.10/16 by the HP Tax Tribunal. However, the HP Tax Tribunal vide order dated 28.05.2022 (Annexure P-2) dismissed the Rectification Application of the Department and observed that there is no mistake or error apparent in the order sought to be rectified.

8. Petitioners have now sought to invoke revisional jurisdiction of this Court under Section 48(1) of the VAT Act, 2005 by assailing the order dated 14.06.2017, passed by the Tax Tribunal in Rectification Application of the petitioners, as also the principal order dated 28.5.2022 passed by the same Tribunal in exercise of powers under Section 45 (2) of the VAT Act.

9. Section 48 (1) of the VAT Act reads as under:-

*“48. Revision to High Court (1) Any person aggrieved by an order made by the tribunal under sub-section (2) of section 45 or under sub-section (3) of section 46, may, within 90 days of the communication of such order, apply to the High court of Himachal Pradesh for revision of such order if it involves any question of law*

*arising out of erroneous decision of law or failure to decide a question of law.”*

10. The clear mandate of law, thus, is that this Court can exercise revisional jurisdiction under Section 48 of the Act only against the orders passed by Tax Tribunal either under Section 45(2) or Section 46(3) of the VAT Act. Such jurisdiction can be exercised if the person aggrieved applies to this Court within 90 days of the communication of the order and also if the involvement of any question of law arising out of erroneous decision of law or failure to decide a question of law is found to exist.

11. The impugned order passed by the Tax Tribunal in Rectification Application filed by the petitioners under Section 47 of the VAT Act is not open to challenge by the petitioners before this Court under Section 48 of the VAT Act. Petitioners can also not be allowed to assail the order dated 14.06.2017, passed by the Tax Tribunal being clearly beyond the period of limitation, as prescribed under Section 48 of the Act.

12. In the given facts and circumstances, the order passed by the learned Tribunal on 14.6.2017 is neither erroneous nor does it amount to non decision of question of law. Since, no question of law has arisen for consideration before this Court, the revision petition fails and is dismissed accordingly.

13. Pending miscellaneous application(s), if any, shall also stand disposed of.

**( Tarlok Singh Chauhan )  
Judge**

**( Satyen Vaidya )  
Judge**

**27<sup>th</sup> July 2023.**  
(krt)