

**GOVERNMENT OF TAMILNADU
COMMERCIAL TAXES DEPARTMENT**

**PROCEEDINGS OF THE AUTHORITY FOR CLARIFICATION AND
ADVANCE RULING**

ACAAR No.13/2016-2017
Acts cell-II/12509/2016

Dated:12.06.2018

- Present:**
1. Dr.T.V. Somanathan, I.A.S.,
Principal Secretary / Commissioner of Commercial Taxes.
 2. Thiru M. Parameswaran,
Additional Commissioner (ST), (Public Relations)(FAC)
 3. Dr. C. Palani,
Additional Commissioner (ST), (Revision Petitions)(FAC)

1	Name and address of the Applicant	:	Tvl. Flipkart India Private Limited ('FK India') SND Warehouse, Shed No. C1, Door No. 4/195, Redhills - Ambattur Road, Puzhal Village, Chennai 600 062.
2.	Registration Certificate No.	:	TIN : 33356318770 CST : 922773
3.	Assessment Circle	:	Madhavaram Assessment Circle
4.	Date of application	:	'Nil'
5.	Date of receipt of application	:	13.05.2016
6.	Clarification sought for	:	Rate of tax clarification on the sale of "Mobile phone chargers accompanying the mobile phone in a sealed package"
7.	Date of Personal Hearing	:	--
8.	Represented by	:	--

ORDER

Tvl. Flipkart India Private Limited ('FK India'), SND Warehouse, Shed No. C1, Door No. 4/195, Redhills - Ambattur Road, Puzhal Village, Chennai 600 062 (TIN 33356318770), registered dealers in the files of Madhavaram Assessment Circle

have preferred application in Form 'VV' and sought clarification under Section 48-A (1) of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, 2006), read with Rule 12-A of the Tamil Nadu Value Added Tax Rules, 2007 (TNVAT Rules, 2007).

2.1. The applicant-dealer have sought for clarification on the rate of tax for **"Mobile phone chargers accompanying the mobile phone in a sealed package"**.

2.2. The applicant-dealer have stated that it is their common practice that a buyer only with an expectations that mobile phone charger would be supplied along with the phone places an order to buy the mobile phone as there is no separate order for the mobile phone charger. They have further stated that there exists consensus ad idem between the contracting parties to sell and buy the mobile phone which is any case accompanied with the charger in a sealed package.

3. The issue has been examined in detail with reference to the provisions of the TNVAT Act, 2006 and TNVAT Rules, 2007 and the related entries in all the Schedules to the TNVAT Act 2006. Section 48-A of the TNVAT Act, 2006 provides for clarification on any point concerned with rate of tax for commodities.

4.1. It is pertinent to state that the Cellular Telephones (Mobile Phones), were liable to tax @ 14.5% during the period from 12.07.2011 to 31.03.2015 vide Entry 13-A (i) of Part-C of the First Schedule to the TNVAT Act, 2006 as inserted by Act No.30 of 2011. The parts and Accessories of Cellular Telephone are also specified under sub-entry (vi) of Entry 13-A of Part-C of the First Schedule to the TNVAT Act, 2006 and made liable to tax @ 14.5%.

4.2. Whereas, the rate of tax for Cellular Telephones (Mobile Phones) alone is reduced from 14.5% to 5% under Section 30 with effect from 01.04.2015 by Notification No. II(2)/CTR/143(a-3)2015 in G.O.Ms. No. 45, Commercial Taxes and Registration (B1) Department, dated 25.04.2015, the rate of tax for the Parts & Accessories of Cellular Telephones are not reduced by the same notification. Therefore, the rate of tax for the Parts and Accessories of Cellular Telephones (Mobile Phone) still stands to be taxed @ 14.5%. Besides, it is pertinent to state that as per the proviso to Section 3(2) of the TNVAT Act, 2006, the rate of tax for main commodity is applicable to parts and accessories of those

commodities only if the parts and accessories of such commodities are not specified within such entry or anywhere in the Schedules. The said proviso to Section 3(2) of the TNVAT Act, 2006 does not apply in the case of reduction in rate of tax by Notification under Section 30 as long as the parts and accessories of the commodity not been included. Hence, it is very clear that the "Mobile Phone Chargers" being classified as parts and accessories, is liable to tax @ 14.5% as per Entry 13-A (vi) of Part-C of the First Schedule to the TNVAT Act, 2006.

4.3. At this juncture, it is also pertinent to draw reference from a recent judgment dated December 17, 2014 by the **Hon'ble Supreme Court in the case of State of Punjab and others vs Nokia India Pvt. Ltd** in Civil Appeal Nos. 11486-11487 of 2014 (arising out of SLP (C) Nos. 30399 of 2011) relating to rate of tax on Cellphone charger. The Hon'ble Supreme Court has held that the Cell phone charger is not a part to cellphone and is also not a composite part to cellphone but an independent product that can be sold separately, without selling the cellphone. Hence, the concessional rate of tax will not be applicable to cell phone charger. On applying the principles laid down by the Hon'ble Supreme Court in the said judgment, the parts and accessories of any Cellular Telephone (Mobile Phone) not sold as a composite part to cellphone, are construed to be separate products falling under Entry 13-A(vi) of Part-C of the First Schedule to the TNVAT Act, 2006.

4. Hence, it is clarified that

- (i) **"Mobile Phone Chargers"** are liable to tax @ 14.5% as per Entry 13-A (vi) of Part-C of the First Schedule to the TNVAT Act, 2006.
- (ii) **"Mobile Phone Chargers"** when sold along with Mobile Phone as a composite one and not mentioned in the invoice separately are liable to tax at 5% as Information Technology products as per Entry 68 of Part-B of the First Schedule to the TNVAT Act, 2006.

Dated this the Twelfth day of June 2018.

Sd/- M. Parameswaran,
Additional Commissioner (PR)(FAC)

Sd/- C. Palani,
Additional Commissioner (RP) (FAC)

Sd/- Dr. T.V. Somanathan,
Commissioner of Commercial Taxes

To

Tvl. Flipkart India Private Limited ('FK India'),
SND Warehouse, Shed No. C1,
Door No. 4/195,
Redhills - Ambattur Road,
Puzhal Village, Chennai 600 062.

Copy to:
The Assistant Commissioner (ST),
Madhavaram Assessment Circle.

The Joint Commissioner (ST),
Chennai (North) Division.

The Joint Commissioner (CS)

To host in the Department Website

The Principal Secretary to Government, Commercial Taxes &
Registration Department, Chennai - 9.

All Joint Commissioners (ST) including Enforcement, LTU, MOU and
ISIC.

All Deputy Commissioners (ST), Territorial, Assessment and
Enforcement

All Head of Offices (Assessment)

The State Representative, Sales Tax Appellate Tribunal, Chennai- 104.

The Addl. State Representative, (AB) Chennai, Madurai and
Coimbatore.

The Director, CTSTI, Greams Road, Chennai - 6.

The Executive Officer, Traders Welfare Board, Chennai - 5.


The Accountant General (Audit)-II, No.44, Greams Road, Chennai - 6.

The Additional Commissioners, Deputy Commissioners, Assistant
Commissioners, Commercial Tax Officers in CCT's Office.

Personal Clerk to the CCT.

Stock File 3/ Acts Cell-II /Spare - 5.

//Forwarded/ By Order//


State Tax Officer