

**WEST BENGAL APPELLATE AUTHORITY FOR ADVANCE RULING
AT 14, BELIAGHATA ROAD, KOLKATA-700015**

Before:

Mr. Rakesh Kumar Sharma, Member

Ms. Smaraki Mahapatra, Member

In the matter of :

An Application filed under Section 100(2) of the West Bengal Goods and Services Tax, Act 2017/Central Goods and Services Tax Act, 2017 for condonation of delay.

- And -

In the matter of

Appeal Case No. 04/WBAAAR/Appeal/2018 dated 10.05.2018

- And -

In the matter of :

An Appeal filed under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017, by M/s Switching Avo Electro Power Limited, having its registered office at 230 S.N. Roy Road, Kolkata-700038, through its Director.



Present for the Appellant: Mr. Ravi Raghavan, Advocate

Heard on: 27.06.2018

Date of order: 25.07.2018

This Appeal has been filed by M/s Switching Avo Electro Power Limited, holding GSTIN 19AAICS2473C1ZC (hereinafter referred to as the "Appellant"), on 10.05.2018 against the Ruling dated 21.03.2018 pronounced by the West Bengal Authority for Advance Ruling. The Appeal was filed beyond the stipulated period of thirty days after the date of communication of Advance Ruling. The Appellant has prayed for condonation of delay on the ground of illness of one of its Directors, which was allowed and the matter heard.

The Appellant supplies power solution products and is also a manufacturer of power backups and solar products, including uninterrupted power supply system (hereinafter referred to as "UPS"). The Appellant had approached the West Bengal Authority for Advance Ruling for classification of the supply of UPS along with the battery, and the WBAAR after Hearing the matter and examining the documents, vide its Ruling dated 21.03.2018, decided that:

"The supply of UPS and Battery is to be considered as Mixed Supply within the meaning of Section 2(74) of the GST Act, as they are supplied under a single contract at a combined single price."

It is against this ruling that the Appellant has filed the instant appeal under Section 100(1) of the West Bengal Goods and Services Tax Act, 2017/Central Goods and Services Tax Act, 2017 (hereinafter referred to as the "GST Act").

The core issue involved in this appeal is whether UPS supplied with external storage battery is naturally bundled and hence a composite supply under the GST Act, or a mixed supply, as held by the West Bengal Authority for Advance Ruling.

Before entering into merit of the appeal it is necessary to see the relevant definitions of the GST Act, which are as under:

Composite supply defined under Clause (30) of Section 2 of GST Act, 2017-

"composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Illustration: Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

Principal supply has also been defined under Clause (90) of Section 2 of GST Act, 2017-

"principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

Mixed supply defined under Clause (74) of Section 2 of GST Act, 2017-

"mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

Further, it is also pertinent to mention here the relevant entries and nature of classification of goods in question. Notification No.01/2017-Central Tax dated 28.06.2017 under the Central Goods and Services Tax Act, 2017 and corresponding Notification No. 1125-FT dated 28.06.2017, under the West Bengal Goods and Services Tax Act, 2017 (as amended from



time to time) provide for rate of tax applicable to intra-State supply and classification of relevant goods as mentioned in the table below:

Schedule	Sl.	CGST @	WBGST @	Chapter/ Heading/ Sub-heading/ Tariff item	Description of Goods	Remarks
IV	138	14 %	14 %	8506	Primary Cells and primary batteries	Omitted on 15.11.2017 vide Notification No. 41/2017-Central(Rate) dated 14.11.2017.
III	376A	9 %	9 %	8506	Primary Cells and primary batteries	Inserted on 15.11.2017 vide Notification No. 41/2017-Central(Rate) dated 14.11.2017
IV	139	14 %	14 %	8507	Electric accumulators, including separators therefor, whether rectangular (including square)	
III	375	9 %	9 %	8504	Transformers Industrial Electronics; Electric Transformer; Static Converters (UPS)	



The Appellant submitted written submissions and argued that when UPS comprising of static converter and an external battery is supplied it falls under Tariff Head 8504 and is taxable @ 18% under item No. 375 of Schedule III of the GST Act. The main argument put forth by the appellant was that UPS cannot function without battery as such it is an integral part of UPS and hence it is naturally bundled and supplied in conjunction with each other and hence the supply of static converter along with external battery should be construed as a composite supply and not a mixed supply.

The Appellant cited following case laws while arguing the case:

1. T.I. Miller Ltd. Vs Union of India and Another [1987(31)ELT344]
2. Kerala State Electronics Dev. Corp. Ltd. Vs Collector of Central Excise, Cochin [1994(71)ELT508]

3. Commissioner of Central Excise Vs Electronics and Controls [1998(27)RLT816(CEGAT)]
4. Mangalore Chemicals & Fertilisers Co. Ltd. Vs Collector of Customs, Bombay [1997(93)ELT548(Tribunal)]
5. Luminous Electronics Pvt. Ltd. Vs Commissioner of Central Excise, new delhi [2001(129)ELT605(Tri-LB)]

The Appellant relied on T.I. Miller Ltd. Vs Union of India and Another [1987(31)ELT344)] in support of contention that a thing is a part of the other only if the other is incomplete without it and an accessory is not essential but adds to its convenience.

In Kerala State Electronics Dev. Corp. Ltd. Vs Collector of Central Excise, Cochin [1994(71)ELT508], Hon'ble Tribunal held that the value of battery was includible in the assessable value of the 'uninterrupted power supply' as the existence of the uninterrupted factor is possible only because of the battery part of the system making the battery an essential part of the system. This decision was also relied upon in the case of Commissioner of Central Excise Vs Electronics and Controls [1998(27)RLT816(CEGAT)] holding that UPS can function without battery for mere conditioning of power but to provide uninterrupted power supply, battery is essential pre-requisite.

The Appellant submitted that in Mangalore Chemicals & Fertilisers Co. Ltd. Vs Collector of Customs, Bombay [1997(93)ELT548(Tribunal)] the UPS was held classifiable as a static converter under Customs Tariff Head 8504 even if it incorporates rectifiers and inverters.

The Appellant also cited the case of Luminous Electronics Pvt. Ltd. Vs Commissioner of Central Excise, New Delhi [2001(129)ELT605(Tri-LB)] in which the Hon'ble Tribunal relied upon the Harmonised System Committee's opinion that UPSS was classified under 8504 nothing that 'a sealed lead acid battery maintenance free' was one of the components of UPSS. This decision was approved by the Supreme Court of India while disposing of the matter of J.K. Synthetics Ltd. Vs Commissioner of Central excise, Jaipur [20039152)ELT35SC]

All the cases cited above were related to the Central Excise or Customs Acts and focused on the classification of UPS under Harmonised Tariff Head 8504 and there was nothing decisive which aids the Appellant to ascertain that the supply of static converter (UPS) and external storage battery is a composite supply or mixed supply, as defined under the GST Act.

In addition to above, the Appellant also cited some Judgments of House of Lords and European Court which dealt with the nature of services and not goods.



The matter is examined in the light of the arguments put forth by the Appellant and the provisions of the GST Act.

There is no denying of the fact that an in-built battery of static converter (UPS) is part and parcel of the uninterrupted power supply system and is covered under Tariff Head 8504 and intra-State supply thereof attracts tax under GST Act as per rate applicable to goods enumerated under Schedule III of Tax-Rate Notification(s), vide serial No. 375, but the situation changes when storage battery or electric accumulator is supplied separately irrespective of whether under a single contract or a separate contract.

We fully agree with the Authority for Advance Ruling's observation that... "The UPS serves no purpose if the battery is not supplied or removed. It cannot function as a UPS unless the battery is attached. However, what needs to be considered is whether or not these two items are "naturally bundled". The stated Illustration to Section 2(30) of the GST Act refers to a supply where the ancillary supplies are *inseparable* from the principal supply and form *an integral part* of the composite supply. Note 3 also refers to a composite machine as the one consisting of two or more machines fitted together to form a whole. When a UPS is supplied with *built-in batteries* so that supply of the battery is inseparable from supply of the UPS, it should be treated as a composite supply and as a composite machine in terms of Note 3. The UPS being the principal supply, the relevant tariff head for the composite supply will be 8504 under serial no. 375 of Schedule III in terms of Notification No. 01/2017-Central Tax (Rate) dated 28/06/2017 (1125-FT dated 28/06/2017 of the State tax)."

The Appellant in fact submitted that strength of the battery, make of a battery or number of batteries is not unique to UPS but it varies as per power requirement of the customer.

The storage battery has multiple uses and can be put to different uses and when supplied separately with static converter (UPS) it cannot be considered as a composite supply or a naturally bundled supply.

In view of the above discussions, we find no infirmity in the Ruling rendered by the West Bengal Authority for Advance Ruling.

The Appeal thus fails and stands disposed of accordingly.

Send a copy of this order to Appellant for information.



sdt
(SMARAKI MAHAPATRA)
Member
West Bengal Appellate Authority

sdt
(RAKESH KUMAR SHARMA)
Member
West Bengal Appellate Authority