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2018 (13) G.S.T.L. 84 (A.A.R. - GST)

BEFORE THE AUTHORITY FOR ADVANCE RULING UNDER GST, WEST BENGAL
S/Shri Vishwanath and Partha Sarathi Dey, Members

IN RE : SWITCHING AVO ELECTRO POWER LTD.

Case No. 4/2018, dated 21-3-2018

Power Solution device - Supply together of UPS and batteries - Classification - Composite supply vis-a-vis Mixed supply - Bundled supply - Applicant seeking Ruling on classification of aforesaid product for payment of GST and as to whether said supply is composite supply or a mixed supply - HELD : Admittedly an UPS cannot function on its own unless it has either a built-in battery in it or a battery is supplied/procured separately either as a part of same contract or as separate supply - In first case when UPS is supplied with a built-in battery, both are inseparable and thus naturally bundled - Such a product would form a composite machine, in terms of Note 3 to Section XVI of Customs Tariff Act, 1975 as two machines fitted together with classification of machine with principal function, i.e., UPS - Supply in such case would also be a composite supply and its classification has to be that of UPS under Heading 8504 of Customs Tariff Act, 1975 - It would be taxable under Serial No. 375 of Schedule III of Notification No. 1/2017-C.T. (Rate), dated 28-6-2017 - However, if these goods are supplied separately under separate contract prices, then while UPS would be classified as above, Batteries would be classifiable separately under Heading 8507 ibid as accumulator battery - These would be taxable under S. No. 139 of Schedule IV of notification ibid - As regards issue raised in application, i.e., when these items are supplied as separate goods but under a single contract price in one invoice, applicant is of view that this supply is a naturally bundled composite supply and should be taxable as UPS - Said plea of applicant not acceptable because a natural bundled supply is one where contract is indivisible - However, supply of UPS with Battery is not indivisible as it can be split in two separate supplies if so desired by recipient - As per GST law, if a combination of goods that does not amount to a composite supply is being offered at a single price, such supplies are to be treated as mixed supplies - Based on information supplied by applicant, it is Ruled that supply of UPS and Batteries in this case would be a Mixed supply as defined under Section 2(74) of Central Goods and Services Tax Act, 2017 and taxable accordingly, i.e., higher of two rates - Sections 2(30) and 2(74) of Central Goods and Services Tax Act, 2017. [paras 9, 10, 11, 12, 13]

UPS - Meaning and Classification of - It is an electrical apparatus that provides emergency power to a load on failure of input power source or mains power - It only provides an immediate protection to hardware such as computers, data centres, telecommunication equipment or other electrical equipment from data loss - On-battery runtime of UPS is relatively short but sufficient to start a standby power source or properly shut down protected equipment - It is different from an auxiliary power unit or generator and is classifiable under Heading 8504 of Customs Tariff Act, 1975. [para 8]

Batteries - Classification of - Under GST Law Batteries are classifiable under Headings 8506 and 8507 of Customs Tariff Act, 1975 - Basic difference between two Tariff Heads is ability of accumulators to be recharged, whereas primary cell batteries cannot be recharged - An accumulator is an energy storage device, which accepts energy, stores it and releases it when needed - Since only accumulators are used with UPS, these are covered under Heading 8507 of Customs Tariff Act, 1975. [paras 3, 7]

Composite Supply under GST - Scope of - As per Note 3 to Section XVI of Customs Tariff Act, 1975 a composite machine consisting of two or more machines fitted together to form a whole is to be classified as a machine which performs principal function - In context of GST said Note is applicable to composite machines whose supply is composite supply being naturally bundled - In terms of Section 2(30) of Central Goods and Services Tax Act, 2017 a supply where ancillary supplies are inseparable from principal supply and form an integral part, are termed as composite supply - Section 2(30) of Central Goods and Services Tax Act, 2017. [paras 5, 6]

Works Contract - Composite supply - A works contract in terms of Section 2(119) of Central Goods and Services Tax Act, 2017 is a composite supply - Steel, cement and other goods and services supplied are inseparable in a contract for civil construction - Recipient has not contracted for supply of steel, cement or architectural service, but for service of constructing civil structure, where all these supplies are inseparable and, therefore, naturally bundled - Section 2(119) of Central Goods and Services Tax Act, 2017. [para 11]

Application disposed of

REPRESENTED BY : Shri Rabindra Agarwal, Director, for the Applicant.

[Order]. - The Applicant, stated to be a supplier of power solutions, including UPS, servo stabiliser, batteries etc. wants a ruling on the classification of the supply when it supplies UPS along with the battery. More specifically, he wants a ruling on whether such supplies can be treated as Composite Supply within the meaning of Section 2(30) of the CGST/WBGST Act, 2017 (hereinafter referred to as "the GST Act"). An Advance Ruling is admissible on this issue under Section 97(1) of the GST Act.

2. The Applicant also declares that the issue raised in the application is not pending or decided in any proceedings under any provisions of the GST Act. The concerned officer, in his written response, raises no objection to the admission of the application. The application is, therefore, admitted.

3. For the purpose of taxation under the GST Act classification of the goods involved (UPS and battery) the classification of the goods has been determined in terms of Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 (1125-FT, dated 28-6-2017 of the WBGST Act, 2017) (hereinafter referred to as "the State Tax"), as amended vide Notification No. 41/2017-Central Tax (Rate), dated 14-11-2017 (2019-FT, dated 14-11-2017 of the State Tax) (hereinafter collectively referred to as the "Rate Notifications on Goods").

Schedule	Serial No.	Tariff Head	Description	Remarks
IV	138	8506	Primary cells and primary batteries	Omitted w.e.f. 15-11-2017 vide Notification No. 41/2017-Central (Rate), dated 14-11-2017
IV	139	8507	Electric accumulators, including separators, whether rectangular (including square)	
III	375	8504	Transformers Industrial Electronics; Electric Transformers; Static Convertors (UPS)	
III	376A	8506	Primary cells and primary batteries	Inserted w.e.f. 15-11-2017 vide Notification No. 41/2017-Central (Rate), dated 14-11-2017

4. Explanation (v) to Notification No. 1/2017-Central Tax (Rate), dated 28-6-2017 (1125-FT, dated 28-6-2017 of the State Tax) clarifies that the Rules for Interpretation of the First Schedule to the Customs Tariff Act, 1975 (hereinafter referred to as "the Tariff Act") including Section and Chapter Notes and General Explanatory Notes shall, insofar as may be, apply to interpretation of the above Notifications. Rules framed under Section 2 of the Tariff Act are to be followed for interpretation of the Section or Chapter Notes mentioned above.

5. Note 3 to Section XVI of the Tariff Act defines a composite machine as the one consisting of two or more machines fitted together to form a whole. Such machines, as well as other machines designed for the purpose of performing two or more complementary or alternative functions, are to be classified as if consisting only of that component or as being that machine, which performs the principal function.

6. Applicability of Note 3 to Section XVI of the Tariff Act (hereinafter referred to as "Note 3") is, however, not absolute, but subject to the context in which it is being applied. In the present context, Note 3 is applicable subject to the definitions of composite supply and its taxability under Section 8(a) of the GST Act.

Section 2(30) of the GST Act defines Composite Supply as “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”.

Principal Supply is defined under Section 2(90) of the GST Act as “*the supply of goods/services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary*”.

Note 3, therefore, is applicable, in this context, to composite machines. Other machines, designed for the purpose of performing two or more complementary or alternative functions, however, can be classified with the help of Note 3 *only if they are naturally bundled and supplied in conjunction with one another in the ordinary course of business*.

7. It appears that batteries are classified under Tariff Heads 8506 and 8507 of the First Schedule of the Tariff Act. The basic difference between the two Tariff Heads is the ability of accumulators to be recharged, whereas primary cell batteries cannot be recharged. An accumulator is an energy storage device, which accepts energy, stores it and releases it when needed. Rechargeable batteries, flywheel energy storage, capacitors, etc. are examples of accumulators. In common usage in an electrical context, an accumulator usually refers to a lead-acid battery. Hereinafter, the battery referred to by the Applicant as being supplied along with UPS will refer to these accumulators.

8. A UPS is classified under Tariff Head 8504. It is an electrical apparatus that provides emergency power to a load when the input power source or mains power fails. A UPS differs from an auxiliary or emergency power system or standby generator in that it provides immediate protection from input power interruptions by supplying energy stored in batteries, supercapacitors or flywheels. The on-battery runtime of most UPS is relatively short but sufficient to start a standby power source or properly shut down the protected equipment. A UPS is typically used to protect hardware such as computers, data centres, telecommunication equipment or other electrical equipment where an unexpected power disruption could cause injuries or data loss.

9. 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. 1/2017-Central Tax (Rate), dated 28-6-2017 (1125-FT, dated 28-6-2017 of the State tax).

10. But a standalone UPS and a battery *can be separately supplied in retail set up*. A person can purchase a standalone UPS and a battery from different vendors. The applicant himself admits that he supplies the battery and UPS as separate machines as well as UPS with battery. It is, therefore, obvious that the UPS and the battery have separate commercial values as goods and should be taxed under the respective tariff heads when supplied separately.

11. The question, however, is what should be the tariff head when the UPS and the battery are supplied as separate goods, but a single price is charged for the combination of the goods supplied as a single contract. The UPS and the battery, being supplied as separate goods, no longer form an integral part of a composite machine, but it remains to be discussed whether or not under these circumstances they may be considered as “naturally bundled”. The applicant insists that as the battery, being supplied as part of an integral contract, remains naturally bundled with UPS - the principal supply. The argument is fallacious. Goods are naturally bundled in a supply contract if the contract is indivisible. For example, a works contract within the meaning of Section 2(119) of the GST Act is a composite supply. Steel, cement and other goods and services supplied are inseparable in a contract for civil construction. The recipient has not contracted for the supply of steel, cement or architectural service, but for the service of constructing the civil structure, where all these supplies are inseparable and, therefore, naturally bundled. The contract for the supply of a combination of UPS and battery, if not built as a composite machine, is not indivisible. The recipient can split it up into separate supply contracts if he chooses. The goods supplied in terms of such contracts are, therefore, no longer naturally bundled and cannot be treated as a composite supply.

12. If a combination of goods that does not amount to a composite supply is being offered at a single price, such supplies are to be treated as mixed supplies. Mixed supply is defined under Section 2(74) of the GST Act as one where “*two or more individual supplies of goods/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*”. The stated Illustration to Section 2(74) of the GST Act refers to a package of items which *can be supplied separately and are not dependent on each other*, but for the instant purpose *are being packaged together*.

13. Based on information furnished by the Applicant and the Purchase Order supplied by them as Sample of the Billing done by them it is seen that though UPS and Battery are two different and independent items, they are billed together and a single piece is quoted for the sale.

14. In view of the foregoing we rule as under :

RULING

15. 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.

16. This ruling is valid subject to the provisions under Section 103(2) until and unless declared void under Section 104 (1) of the GST Act.

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Judicial Analysis
for
Switching AVO Electro Power Ltd.
2018 (13) GSTL 84 (A.A.R. - GST)

This case was:

- **Affirmed in 2018 (15) GSTL 636 (Appellate Authority For Advanced Ruling under GST)**

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