



KARNATAKA APPELLATE AUTHORITY FOR ADVANCE RULING
6TH FLOOR, VANIJYA THERIGE KARYALAYA
KALIDASA ROAD, GANDHINAGAR, BANGALORE 560009

(Constituted under Section 99 of the Karnataka Goods and Services Tax Act, 2017 vide Government of Karnataka Order No FD 47 CSL 2017, Bengaluru, dated 25-04-2018)

BEFORE THE BENCH OF

Shri. D.P.NAGENDRA KUMAR, Member

Shri. M.S. SRIKAR, Member

ORDER NO:-KAR/AAAR/02/ 2019-20

Dated:-16.08.2019.

Name and address of the appellant	M/s Xiaomi Technology India Private Limited Orchid-Block E, Embassy Tech Village, Devarabisanahalli, Marathahalli Outer Ring Road, Bangalore-560103
GSTIN or User ID	29AAACX1645B1ZK
Advance Ruling Order against which appeal is filed	Advance Ruling No KAR ADRG 01/2019 Dated:22.01.2019
Date of filing appeal	23.02.2019
Represented by	Mr. K Sivarajan, Chartered Accountant
Jurisdictional Authority – Centre	Range DED-8
Jurisdictional Authority – State	LGSTO- 015, Bengaluru
Whether payment of fees for filing appeal is discharged. If yes, the amount and challan details.	Yes. Payment of Rs. 20,000/- made vide Challan CIN IBKL19022900213584 dated 19.02.2019

PROCEEDINGS

(Under Section 101 of the CGST Act, 2017 and the KGST Act, 2017)

At the outset, we would like to make it clear that the provisions of both the Central Goods and Services Tax Act, 2017 and the Karnataka Goods and Services Tax Act, 2017 (hereinafter referred to as CGST Act, 2017 and KGST Act, 2017) are the same except for certain provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean a reference to the corresponding similar provisions under the KGST Act.

The present appeal has been filed under Section 100 of the CGST Act, 2017 and the KGST Act, 2017 by M/s.Xiaomi Technology India Private Limited (hereinafter referred to as 'Appellant') against the Advance Ruling No KAR ADRG01/2019 dated 22.01.2019 pronounced by the Karnataka Authority for Advance Ruling.

Brief facts of the case:

1. The Appellant is a Private Limited company and registered under GST with GSTIN No.29AAACX1645B1ZK and is engaged in trading of electrical and electronic goods such as Mobile Phones, Power Banks, Air Purifiers & other lifestyle products. The Power Bank traded by the appellant is procured domestically as well as imported and the same is sold under the brand name 'Mi Power Bank', through a chain of distributors / retailers within India.

2. The Power Bank is a device used to charge mobile phones, tablets & other compatible electronic devices. It hosts mainly three components i.e.,

- The Battery,
- The Circuitry (charge management system & voltage boost converter) and
- The Outer Shell.

The first component battery used in the said power bank, is a lithium ion polymer battery used to store the electrical energy, which can be connected to a USB Port of a Computer or a Battery Charger i.e., adaptor.

The Second component is the Circuitry, which is equipped with an Integrated Chipset that has the dual function of providing charge management and voltage boost control. The charge management system detects the type of charger being used to charge the Mi Power bank and adjust the charging current accordingly i.e. it converts the input voltage to 4.2V that is to be stored in the lithium ion polymer battery of power bank. The Voltage Booster Converter is a DC-to-DC power converter that steps up voltage from its input supply to its output i.e., load. It is a class of switched mode power supply (SMPS) containing at least two semiconductors (a diode and a transistor) and at least one energy storage element i.e., a Capacitor, Inductor or the two in combination. Filters made of Capacitors (sometimes in combination with inductors) are added to the output and input to reduce voltage ripples. The said converter detects the device being charged by the Mi Power Bank and adjusts the current to ensure the optimum level of current & voltage output, as per the load demand. The third component is a protective shell used for encasing the other components. It is of aluminum / polycarbonate and is flame retardant.

3. The Power Bank performs the function of charging i.e. it provides regulated output to compatible devices such as mobile phones, tablets, Bluetooth speakers etc. While charging the said compatible devices, the Power Bank performs mainly two activities namely (i) accumulation of electrical energy and (ii) conversion of electrical energy from DC to DC to provide regulated output current to the compatible device. The Power Bank contains an integrated chipset, which regulates the current at the time of charging the battery cell and also at the time of output based on the load demand of the product being charged. The appellant classified the Power Bank under HSN code 85049090 as 'Static Converter-others' while importing and making supplies of Power Bank (from Pre- GST Period).

4. The appellant filed an application on 17.05.2018 before the Karnataka Authority for Advance Ruling under Section 97 of CGST/KGST Act, 2017 read with Rule 104 of CGST / KGST Rules, 2017 in form GST ARA-01, seeking a ruling on the following question:

"Whether the 'Power Bank' traded by the appellant is classifiable under Heading 8504 40 90 as 'Static Converter-others?'"

5. Subsequently, the Karnataka Authority for Advance Ruling, vide Advance Ruling No. ADRG 01/2019 dated 22nd January 2019 (hereinafter referred to as 'Impugned Order') gave the following ruling:

"The 'Power Bank' traded by the appellant is classifiable under Heading 8507 as Accumulator and not as Static Converter".

6. Being aggrieved by the above-mentioned Ruling of the Authority, an appeal was preferred before Appellate Authority for Advance Ruling under section 100 of the CGST Act, 2017 / KGST Act, 2017 on 23.02.2019 on following grounds:

6.1 The authority has erred in concluding that both the circuits (charging management system and voltage boost converter) are essentially enhancing the function of the main part i.e. Battery and are ancillary in nature. In this regard, the appellant highlighted the functioning of the power bank with an example as follows:

6.1.1 Suppose a charger having an output of 9 voltage DC is used to charge the power bank. The charging management system of the power bank detects type of charger being used to charge the power bank and reduces the input of 9 voltage DC to a constant 4.2 Voltage DC as required for the battery and lithium-ion polymer batteries of the power bank is appropriately charged. Non-availability of the charge management system would damage the battery of the power bank.

6.1.2. Further, when a mobile phone is connected to the power bank for charging the batteries of the mobile phone, the voltage boost convertor of the power bank detects the input load requirement of the mobile battery and supplies the same. Suppose the input requirement of battery of the mobile phone is 5/9/12 voltage DC, the voltage boost convertor of the power bank derives the power from the lithium ion polymer battery at 4.2 voltage and converts the electric power to 5/9/12 voltage DC and mobile phone batteries gets appropriately charged. In a case, where the voltage step down/step up is not effected by the voltage boost converter, the same could result in damage of the battery of the device being charged.

6.1.3. In view of the above, the appellant has submitted that the Charging Management System and the Voltage boost converter are not enhancing the function of the battery and are not in nature of ancillary components of the power bank. They submitted that charge management systems and voltage boost converter are integral and essential to the power banks principal function i.e. to appropriately charge battery of the mobile phone.

6.2. The Appellant argued that the authority has erred in holding that there is no conversion involved in the power bank and hence classifiable under HSN 8507 as an accumulator. In this regard they have submitted the following:

6.2.1 Static converter in general terms means device which is used to convert electrical energy and control flow of power between two sources. The apparatus which are static converter are such as charger of mobile phones or any other device.

6.2.2. As per explanatory notes (volume 5) to the Harmonized Commodity Description and Coding System (2017, edition 6) under heading 8504, page XVI-8504-2 states that “ *the apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g. valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators etc). Their operation is based on the principle that the converting elements act alternately as conductors and non-conductors....*”

“This group includes:....

(A) Rectifiers by which alternating current (single or polyphase) is converted to direct current, generally accompanied by voltage change.

(B) Inverter by which direct current is converted to alternating current.

(C) Alternating current converters and cycle converters by which alternating current (single or polyphase) is converted to a different frequency or voltage.

(D) Direct current converters by which direct current is converted to a different voltage”.

6.2.3. From the above explanatory notes, it can be inferred that a static converter is an apparatus or a device which converts the electric energy in order to adapt it for further use. A static converter essentially converts electric charge of a known frequency and voltage (input) into one having different frequency and voltage (output), which can be higher or lower than the known frequency of input. Accordingly, as per clause D to the above explanatory note, even a DC to DC converter which converts direct current to a different DC voltage would be a Static converter. In a power bank, the charging management system and voltage boost converter are direct current converter which are classified as of type static converter under clause (D) to the explanatory notes. These converters perform the function of stepping up and stepping down the voltage of the electric current as per the requirement of the battery of the power bank and device connected to it in order to ensure that device connected is appropriately charged.

6.2.4 Further, they have submitted that an accumulator cannot itself charge another battery unless another charger is connected to it i.e. a static converter. As per the Section Note.4 to the Section XVI of Part II of the import tariff, the principal function of the power bank is to appropriately charge the device connected to it, which is performed by charging management system and voltage boost converter in the power bank. The said components are in nature of

the static converter in the light of the explanatory notes to the Harmonized Commodity Description and Coding System.

6.2.5. Further, they have relied on the Judgment of Hon'ble CESTAT, Delhi bench in the case of C.E.G.S.T-Delhi vs SB Industries (Final Order No 50039/2019 dt 14.01.2019), wherein the Hon'ble CESTAT in para 10 of sub para 4(iv) of the judgment has held that ;

“an accumulator can never act as a mobile battery charger without the use of a separate charger, whereas the power bank is primarily used to charge mobile batteries. This is the basic function that differentiate a power bank from an accumulator. The adjudicating authority has not appreciated the facts that (a) it is the storage batteries inbuilt in the power banks and not the power banks, which are classifiable as accumulators (b) the primary function of a power bank is to charge the Mobile batteries”.

6.2.6. With regard to the argument of the advance ruling authorities that power bank does not involve any conversion, the appellant submitted that to appropriately charge battery of any device there is requirement of a static converter to convert electric power from AC to DC or DC to DC as the case may be. Therefore the argument of the authorities that the power bank does not involve any conversion is not correct.

6.2.7. The appellant relied on the detailed technical research report obtained by them from Indian Institute of Technology (Banaras Hindu University) and Varanasi, wherein the experts have evaluated whether Power Bank is essentially an electrical accumulator or a static converter. In the said report, the expert has concluded that Power Bank can be considered as Static Converter and not only a charge accumulator. Relevant para of the said report is reproduced below:

“In view of the architecture and operation discussed in Section 5, it may be observed that the Power Bank stores energy with the help of power electronic circuits and also release energy to charge consumer's battery through the power converters only. These power electronic circuits also ensure adequate protection to the over current and overvoltage. In this way it can be said that battery charger, controller and voltage boost converter are essential to the performance of principal function of Power Bank. Thus, merely having a Li-ion battery neither made a power bank nor is sufficient enough to charge the consumers battery with due protection. Based on these discussions following may be concluded – “Power Bank can be considered as Static Converter and not only a charge accumulator”.

The learned authorities, in the impugned order have not considered the above technical research report before concluding the Power Bank as an electrical accumulator.

6.2.8. Further, they have drawn attention towards the Rule 3(b) of the General Rules of Interpretation of Import Tariff, which has been reproduced below:

“3. When by application of Rule 2(b) or for any other reason, goods are prima facie, classifiable under two or more headings, classification shall be affected as follows:

- (a) *The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more heading each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those heading are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*
- (b) *Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable".*

6.2.9 As per the above, they contended that the power bank shall be classified as per the component contained in it, which gives the Power Bank its essential character and performs principal function of a power bank. Accordingly, Power Bank would have to be classified under tariff entry 85044090 as "static converter-others". Further they submitted that the principle function of the Power Bank is to ensure that the consumer shall be able to charge their device appropriately without damaging the battery of the device connected to it. Accordingly, merely having a lithium-ion polymer battery would not be of use to the consumer, who is looking for a solution to charge their devices on the go unless it is supplemented by a converter. Hence, the Power bank would have to be classified as per the converter contained in it which performs the principle function of charging.

In view of the above detailed submissions and judgments cited above, the appellant pleaded that the Power Bank traded by them is classifiable under 8504 as a Static Converter and not as an accumulator.

6.3. The authority has erred in holding that the ratio of the judgments classifying UPS as static converter is not applicable to the present case holding that the power bank would not function without use of a battery. In this regard, they detailed the architecture and functioning of the UPS to buttress their claim that the judgments classifying UPS as static converter are applicable.

6.3.1 A UPS is a specialized circuit for catering to power loss conditions. It comes with a suitable sized battery that gets charged during the normal operation and consumption from mains. When the mains fail, a sensing switch automatically transmits the battery power to the load, disconnecting the main.

6.3.2 The UPS mainly consists of three components i.e., Charger, Battery and Inverter. The mode of operating and function of UPS is similar to that of Power Bank. A UPS is intended to provide regulated output power same as a power bank. The UPS and Power Bank both host a battery / storage device along with power electronic circuits flow of power from input to output. UPS also performs the process of charging and discharging similar to that of Power Bank. In UPS the stored energy is released to the load as per the requirement, when grid

power is not available, similar to Power Bank, where also the stored energy in battery is transmitted to the end device as per the load the requirement of device. The only difference between Power Bank and UPS is that for output, Power Bank has a voltage boost converter module while UPS has a power inverter module. Inverter module is an electronic device or circuitry that changes direct current (DC) to alternating current (AC). Therefore, they submitted that, Power Bank is akin to a UPS and it is a settled position that the UPS is classifiable under the Customs Tariff heading 8504.

6.3.3 Further, they relied on the ruling by the Supreme Court upholding the decision of the CESTAT in the case of Luminous Electronics Private Limited {2001(129) ELT 605(Tri-L.B)} classifying the UPS under heading 8504. They submitted that, the question before the bench was whether UPS is classifiable under the HSN 8504 vis-à-vis 8543. In this regard, the Hon'ble bench of CEGAT, New Delhi held that UPS is covered by the wording of 'static converter' as understood in HSN and hence classifiable under the heading 8504, which was upheld by the Supreme Court. Further, they drew attention to the CBEC Board Circular No.104/2003-Cus dated 09-12-2003, wherein it was categorically clarified 'the UPSS will merit classification under subheading 8504 of the Customs Tariff Act, 1975 and 8504 of the Central Excise Tariff Act, 1985'.

6.3.4. In view of the above, they have submitted that the UPSS can work without a battery since in any case another source of power can be used to as a source of Power. Accordingly, the battery should not be decisive factor for classification in UPSS instead the classification should be based on whether product falls within the description of HSN entry. Power Bank should be classified under HSN 8504 as a Static Converter. They submitted that the appellant and its technical team during the personal hearing before the authorities had explained that power bank can charge the device connected to it, even when a power bank is connected to a power source, similar to that of example taken in the aforementioned judgment. In such cases, the circuits in the power bank would bypass connection to the battery (i.e. would directly supply the electric energy to the power bank by stepping down and stepping up the electric energy to suit the charge requirements of the device connected to it) and appropriately charge the battery of the device connected to it. In view of the above, they contended that the authorities had erred in concluding that the principal function of power bank is that of battery based on the assumption that power bank would not function without the battery.

6.4. The learned authority has erred in concluding that Power Bank is an accumulator based on the explanatory note in the Harmonized Commodity Description and Coding Systems for HSN 8507. In this regard, they have submitted that the explanatory note in respect of HSN 8507 (accumulator) covered products like battery packs within its ambit. Battery packs means a set of any number of identical batteries or individual battery cell and called as external batteries used to supply energy only to specific devices against specified rate of output voltage. The voltage booster converter in the power bank are not in nature of the ancillary components. The voltage boost converter is an integral part of the power bank itself, which ensure that the battery of the connected device is appropriately charged and does not cause any damage to the battery of the device connected to it. Further, they submitted that

the electrical connectors referred in the explanatory notes are in nature of the wiring connectors and not in the nature of the static converter.

6.5. The learned authority has erred in holding that their view is supported by Notification No.24/2018-Central Tax (Rate) dated 31.12.2018, effective from 01.01.2019, which classified the 'Power Bank' under the heading 8507 vide Sl.No.376AAA covering 'lithium-ion accumulators(other than battery) including lithium -ion power bank.' In this regard, they have submitted that the mere insertion of the entry in the notification would not be conclusive to determine the classification of a product. The classification of the product must be made in the light of the tariff entries read along with rules for the interpretation of the Customs Tariff Act, 1975.

6.6 In view of the aforesaid, the appellant prayed that the impugned order be modified and the Power Bank be classified under HSN 8504 40 90 as Static Converter.

PERSONAL HEARING:-

7. The Appellants were called for a personal hearing on 15.04.2019 and were represented by Shri. K. Sivarajan, Chartered Accountant. The Authorized representative narrated the facts of the case and reiterated the submissions made in the grounds of appeal. They emphasized that the clearly defined function of the Power Bank is the charging function and therefore in terms of entry 3(b) of the general Rules of Interpretation, the correct classification of the Power Bank is 8504 as Static Converter. They drew attention to the expert opinion obtained from the Indian Institute of Technology (Benaras Hindu University), Varanasi wherein it is opined that a Power Bank can be considered as Static Converter and not only a charge accumulator. They highlighted the fact that this expert opinion was not considered by the Authorities in the impugned order. They also drew attention to the decision of the Delhi bench of CESTAT in S.B Industries case wherein it was held that Power Bank is a mobile battery charger and not an electrical accumulator. They also submitted a compilation of case laws and relevant GST Rate Notifications and explanatory notes which were being relied upon to buttress their claim for classification under Chapter Heading 8504 as Static Converter.

DISCUSSION & FINDINGS:-

8. We have gone through the records of the case and taken into consideration the submissions made by the Appellant in their grounds of appeal and at the time of the personal hearing.

9. The issue before us is regarding the classification the item "Power Bank" which is traded by the Appellant. The question to be determined is whether the "Power Bank" is to be classified under Chapter Heading 8504 as a Static Converter or under Chapter Heading 8507 as an Electrical Accumulator.

10. Since the description of the entries under Chapter Heading 8504 and 8507 as per the Customs Tariff Act, 1975 are of specific importance, the same are extracted hereunder:

Tariff Item	Description of goods
1	2
8504	ELECTRICAL TRANSFORMERS, STATIC CONVERTERS (FOR EXAMPLE, RECTIFIERS) AND INDUCTORS
8504 40	- Static Converters:
8504 40 10	--- Electrical inverter
	--- Rectifier
8504 40 21	---- Dip Bridge rectifier
8504 40 29	---- Others
8504 40 30	--- Battery chargers
8504 40 40	--- Voltage regulator and stabilizers (other than automatic)
8504 40 90	--- Other
8507	ELECTRIC ACCUMULATORS, INCLUDING SEPARATORS THEREFOR, WHETHER OR NOT RECTANGULAR (INCLUDING SQUARE)
8507 10 00	- Lead-acid, of a kind used for starting piston engines
8507 20 00	- Other lead-acid accumulators
8507 30 00	- Nickel-cadmium
8507 40 00	- Nickel-iron
8507 50 00	- Nickel-metal hydride
8507 60 00	- Lithium-ion
8507 80 00	- Other accumulators
8507 90 00	- Parts

10.1. The nomenclature of goods described in the Customs Tariff Act is based on the Harmonized System of Nomenclature (HSN) developed by the World Customs Organization. The HSN notes on Electrical Static Converter as described in Chapter 8504 of the Customs Tariff Act and Electric Accumulators as described under Chapter Heading 8507 of the said Tariff Act are extracted below:

8504 - ELECTRICAL STATIC CONVERTERS

The apparatus of this group are used to convert electrical energy in order to adapt it for further use. They incorporate converting elements (e.g., valves) of different types. They may also incorporate various auxiliary devices (e.g., transformers, induction coils, resistors, command regulators, etc). Their operation is based on the principle that the converting elements act alternately as conductors and non-conductors.

The fact that these apparatuses often incorporate auxiliary circuits to regulate the voltage of the emerging current does not affect their classification in this group, nor does the fact that they are sometimes referred to as voltage or current regulators.

This group includes:

(A) Rectifiers by which alternating current (single or polyphase) is converted to direct current, generally accompanied by a voltage change.

(B) Inverters by which direct current is converted to alternating current.

(C) Alternating current converters and cycle converters by which alternating current (single or polyphase) is converted to a different frequency or voltage.

(D) Direct current converters by which direct current is converted to a different voltage.

Electrical static converters may be divided into the following principal categories according to the type of converting element with which they are equipped:

(1) Semiconductor converters based on the one-way conductivity between certain crystals. Such converters consist of a semiconductor as the converting element and various other devices (e.g., coolers, tape conductors, drives, regulators, control circuits). These include:

(a) Monocrystalline semiconductor rectifiers using, as a converting element, a device containing silicon or germanium crystals (diode, thyristor, transistor).

(b) Polycrystalline semiconductor rectifiers using a selenium disc.

(2) Gas discharge converters, such as:

(a) Mercury arc rectifiers. Their converting element consists of a glass envelope or a metal tank having a vacuum and containing a mercury cathode and one or more anodes through which the current to be rectified passes. They are equipped with auxiliary devices, e.g., for priming, charging, cooling, and sometimes to maintain the vacuum. There are two categories of gas discharge rectifiers identifiable according to the mechanism of the primer, viz., "excitrons" (with charging anodes) and "ignitrons" (with igniters).

(b) Thermo-ionic rectifiers with incandescent cathodes. Their converting element (e.g., a thyratron) is similar to that of mercury arc rectifiers except that it contains an incandescent cathode in place of the mercury cathode.

(3) Converters with a mechanical converting element based on the one-way conductivity of various contacts, such as:

(a) Contact rectifiers (e.g., those using camshafts) with a device whose metal contacts open and close in synchronization with the frequency of the alternating current to be rectified.

(b) Mercury-jet turbine rectifiers with a rotating jet of mercury, synchronized with the frequency of the alternating current, which strikes a fixed contact.

(c) Vibrator rectifiers with a thin metal tongue, oscillating at the frequency of the alternating current, which touches a contact so placed that the current is drawn from the source.

(4) Electrolytic rectifiers based on the principle that the combination of certain products used as electrodes in combination with certain liquids used as electrolytes will only allow current to flow in a single direction. Electrical static converters may be used for different purposes, e.g.:

(1) Converters to supply electricity to drive stationary machines or electric traction vehicles (e.g., locomotives).

(2) Supply converters, such as accumulator chargers (which consist essentially of rectifiers with associated transformer and current control apparatus), converters for galvanizing and electrolysis, emergency power packs, converters for installations

which supply high-tension direct current, converters for heating purposes and for the current supply to electro-magnets.

Also classified here are converters known as high-tension generators (used particularly with radio apparatus, emission tubes, microwave tubes, ion-beam tubes) which convert the current from any source, usually the mains, into the direct high-tension current necessary for feeding the equipment concerned by means of rectifiers, transformers, etc.

This heading also includes stabilized suppliers (rectifiers combined with a regulator), e.g., uninterruptible power supply units for a range of electronic equipment.

8507: ELECTRIC ACCUMULATORS (storage batteries or secondary batteries) are characterized by the fact that the electrochemical action is reversible so that the accumulator may be recharged. They are used to store electricity and supply it when required. A direct current is passed through the accumulator producing certain chemical changes (charging); when the terminals of the accumulator are subsequently connected to an external circuit these chemical changes reverse and produce a direct current in the external circuit (discharging). This cycle of operations, charging and discharging, can be repeated for the life of the accumulator.

Accumulators consist essentially of a container holding the electrolyte in which are immersed two electrodes fitted with terminals for connection to an external circuit. In many cases the container may be subdivided, each subdivision (cell) being an accumulator in itself; these cells are usually connected together in series to produce a higher voltage. A number of cells so connected is called a battery. A number of accumulators may also be assembled in a larger container. Accumulators may be of the wet or dry cell type.

The main types of accumulators are:

- (1) Lead-acid accumulators, in which the electrolyte is sulphuric acid and the electrodes lead plates or lead grids supporting active material.
- (2) Alkaline accumulators, in which the electrolyte is usually potassium, or lithium hydroxide or thionyl chloride and the electrodes are, for example:
 - (i) Positive electrodes of nickel compounds and negative electrodes of iron, cadmium or metal hydride;
 - (ii) Positive electrodes of lithiated cobalt oxide and negative electrodes of a blend of graphite;
 - (iii) Positive electrodes of carbon and negative electrodes of metallic lithium or lithium alloy;
 - (iv) Positive electrodes of silver oxide and negative electrodes of zinc.

The electrodes may consist of simple plates, grids, rods, etc or of grids or tubes covered or filled with a special paste of the active material. ... Alkaline accumulators may be of a specific size and shape, so designed to fit the device for which they are the source of electricity. They may be within waterproof containers. Many alkaline accumulators may have the external appearance of primary cells or batteries of heading 85.06

Accumulators are used for supplying current for a number of purposes e.g. motor vehicles, golf carts, fork-lifts, power hand-tools, cellular telephones, portable automatic data processing machines, portable lamps.

Accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, often referred to as "battery packs" are covered by this heading, whether or not they include any ancillary components which contribute to the accumulator's function of storing and supplying energy, or protect it from damage, such as electrical connectors, temperature control devices (e.g thermistors), circuit protection devices, and protective housings. They are classified in this heading even if they are designed for use with a specific device.

11. Let us now examine the nature of the impugned product "Power Bank" and its use. Power banks are commonplace and with our increasing use of battery powered equipment: everything from mobile phones to battery powered headphones, portable speakers, MP3 players can be charged via a power bank. They are effectively a portable charger. All they need is a USB charging interface.

11.1 Power banks can be defined as portable batteries that use circuitry to control any power in and power out. They can be charged using a USB charger when power is available, and then used to charge battery powered items like mobile phones and a host of other devices that would normally use a USB charger.

11.2 All power banks use rechargeable batteries based around lithium technology. Lithium-Ion and Lithium-Polymer batteries are most commonly used for power banks. Lithium-ion batteries use a variety of cathodes and electrolytes. Common combinations include an anode of lithium (Li) ions dissolved in carbon or graphite and a cathode of lithium cobalt-oxide (LiCoO₂) or lithium manganese-oxide (LiMn₂O₄) in a liquid electrolyte of lithium salt. Lithium-Ion-Polymer batteries replace the liquid electrolyte with a plastic (or polymer) electrolyte. The electrolyte is a chemical medium that allows the flow of electrical charge between the cathode and anode. Unlike disposable batteries which work only in one direction i.e transforming chemical energy to electrical energy, rechargeable batteries are designed so that electrical energy from an outside source can be applied to the chemical system, and reverse its operation, restoring the battery's charge.

11.3 The storage capacity of the lithium-ion battery used in a Power Bank varies and this determines the charging capacity of the Power Bank. The more mAh a power bank has, the larger the energy stored which means more recharges for your device. For eg. A Power Bank with a capacity of 10000mAh can charge a 2000mAh smartphone roughly around 3-4 times. Powerbanks are encased in a housing and feature a power button, USB ports and four LED indicator lights that indicate the lithium battery's charge levels. Included with each powerbank is a USB cable. Power Banks use sophisticated electronic circuitry to manage being charged, and then charging other devices.

11.4 In order to ensure that the amount of charge in the battery is known so that they do not become overcharged, to ensure that they are charged at the right rate, and also to manage the

charging of the portable devices, specifically designed integrated circuits and modules are built into the Power Bank to provide all the intelligence required. Over Voltage Protection, Over Charge Protection, Over Current Protection, Over Heat Protection, Short-Circuit Protections and Over Discharge Protections are the common safety measures observed with standard Power Banks.

12. We note that the Appellant has very strongly built its case on the basis of the technical report given by the Department of Electrical Engineering, Indian Institute of Technology (Benaras Hindu University), Varanasi regarding the Power Bank – whether it is a Static Converter or charge accumulator. The relevant portion of the report is as under:

"Power Bank : A static converter or charge accumulator"

In view of the architecture and operation discussed in section 5, it may be observed that the power bank stores energy with the help of power electronic circuits and also releases energy to charge consumer's battery through the power converters only. These power electronic circuits also ensure adequate protection to over current and over voltage. In this way it can be said that battery charger, controller, and voltage boost converter are essential to the performance of principal function of power bank. Thus, merely having a Li-ion battery neither make a power bank nor is sufficient enough to charge the consumer's battery with due protection. Based on these discussions following may be concluded.

"Power bank can be considered as static converter and not only a charge accumulator."

13. We have gone through the technical report in detail and find that the opinion given by the IIT (BHU) Varanasi is not conclusive. It does not categorically state that the Power Bank is a static converter and not a charge accumulator. All that it conveys is that, based on the architecture and operation of the Power Bank, it can be considered as a static converter and not only a charge accumulator. The technical opinion seems to suggest that one would not be wrong in considering a Power Bank as a static converter. A possible inference of the opinion is that while the Power Bank is a charge accumulator, it can be considered as a static converter. Such a non-conclusive, neither-here-nor-there opinion cannot be the basis for determining the classification of a product under law. Therefore, we are not inclined to give any weightage to the technical opinion of the IIT (BHU) Varanasi furnished by the Appellant.

14. The Appellant has also strongly relied on the Delhi Tribunal's decision in the case of M/s. S.B Industries (2019-VIL-37-CESTAT-DEL-CE) to buttress their case that the battery in the power bank in itself cannot act as a charger; that there should be another charger connected to it to appropriately charge the device, which are in the nature of static converter. We have gone through the said case law in detail. We find that the point being determined by the Tribunal in the said case was regarding the eligibility to exemption Notification No 12/2012 Customs. The appellant in that case was a manufacturer of power bank and claimed the benefit of Customs Notification No 12/2012 Cus on the imports of parts for the manufacture of the power bank. The said Notification exempts "parts or components as classifiable under any chapter for manufacture of battery charger of a mobile handset". The

Revenue denied the benefit of the said exemption to the appellant on the grounds that the power bank manufactured by them was an accumulator and not a battery charger. The Tribunal while examining that case was only determining whether the power bank was a battery charger or not. At no point did the Tribunal in the said case determine the classification of the power bank. The Tribunal in that case agreed fully with the conclusions arrived at by the Commissioner (Appeals) based on the use of the power bank and the trade/common parlance theory that power bank is a kind of mobile charger and hence eligible for the exemption. The reference to the classification of the power bank is only an *obiter dicta* and hence has no persuasive value. In view of the different background and facts, we find that this decision does not advance the Appellant's case before us.

15. The Appellant has also placed reliance on the decision of the Larger Bench of the Tribunal in the case of Luminous Electronics Pvt Ltd reported in 2001 (129) ELT 605 (Tri-LB) wherein it has been held that uninterrupted power supply system (UPSS) is classifiable as static convertor under Heading 85.04. This decision by the five-member bench of the Tribunal has been approved by the Supreme Court (2003 (152) ELT 35 (SC)). The Appellant submitted that the mode of operating and function of UPS is similar to that of a Power Bank and hence the Power Bank is also to be classified as a static converter under heading 85.04. We have gone through the details of this case thoroughly. We find that the Larger Bench has observed that the heart of the UPS system is the rectifier-inverter unit called module. We observe that in the Power bank such a module is absent. The Power bank works on the converter module where the lithium-ion polymer battery housed in the Power bank accumulates the electrical energy and the voltage boost converter regulates and converts the charge from DC to DC to the device being charged. In the UPS system, the inverter changes the DC to AC. Its function is to accept AC line power and deliver transient-free AC power to the critical load. This basic difference in the regulated output between the UPS and the Power bank has also been acknowledged by the Appellant.

16. It is trite law that judgements have persuasive value only when there is similarity in the facts. In the instant case, the classification of the product which we are to determine is the Power Bank whereas the product which was in question before the Larger Bench for determination was the classification of the UPS. As already mentioned, the two products are different in the manner they supply the output power. As such the ratio of the decision of the Larger Bench in the case of M/s Luminous Electronics Ltd is of no persuasive value in the matter before us. Further, even applying the trade parlance theory / common parlance theory, the two products i.e. UPS and Power bank are dissimilar in their functions. While the primary use of a Power Bank is to charge the batteries of a mobile phone/laptop/tablet, the function of a UPS is to provide a range of electronic equipment with stable alternating current in the case of failure or serious disruption of the main electricity supply. When a consumer wants to buy a portable mobile charging device, which he can use without looking for a power source, he would look for a Power Bank and not a UPS because it performs a specific function for him. On the other hand when a consumer desires to have an uninterrupted supply of regulated power to his electrical equipment even during brownouts and blackouts, he would opt for a UPS and not a Power Bank. The dictum laid down by the Supreme Court in Atul Glass

Industries Ltd reported in 1986 (25) ELT 473 (SC), that the common parlance theory is a test commonly applied to decide classification disputes is to be applied here to distinguish a UPS from a Power Bank.

17. With the technical report and the relied upon case laws not being of any assistance to advance the case of the Appellant, we turn to the HSN Explanatory Notes to decide the classification of the Power Bank. The Harmonised System of Nomenclature and the Chapter Notes and Explanatory Notes thereto, on which the Tariff Act has been modelled has been repeatedly acknowledged by Courts to be a safe guide for resolution of disputes with regard to classification under the Tariff Act. When we read the Explanatory Notes on Chapter Heading 85.04 and 85.07 (extracted above), we find that, in the case of Static Converters, there is a conversion of electrical energy in order to adapt it for further use. A characteristic feature of this class of apparatus (Static Converters) is that the flow of energy is one way. Electrical Static Converters operate on the principle that the combination of certain products used as electrodes in combination with certain liquids used as electrolytes will only allow current to flow in a single direction. On the other hand, the electrical accumulators are characterised by the fact that the electrochemical action is reversible so that the accumulator may be recharged. The battery in the Power Bank acts as the accumulator and it stores the electrical energy and supplies it when required. In a static converter, there is no storage of electrical energy. The HSN Explanatory Notes also state that accumulators containing one or more cells and the circuitry to interconnect the cells amongst themselves, often referred to as "battery packs" are covered by the heading 84.07, whether or not they include any ancillary components which contribute to the accumulator's function of storing and supplying energy or protect it from damages, such as electrical connectors, temperature control devices, circuit protection devices and protective housing.

18. In this case, we find that the Power Banks consists of not only the Lithium-ion Polymer battery but also the circuitry such as 'charge management system' and 'voltage boost converter'. All the components together make up the Power Bank. Admittedly, it is not the battery alone which makes up a Power Bank. The battery combined with the charge management system and the voltage boost converter constitute the Power Bank. All three components work in tandem to perform the function of storing electrical energy and discharging it to the connected device when required. The mere fact that there is a converter in the Power Bank will not make it a Static Converter. It is emphasised that the primary difference between the Static Converter and the Accumulator is the fact of storage of electrical energy. It is not the function of converting the direct current from its input supply to its output device by either stepping up the voltage which characterises an accumulator. Accumulation of electrical energy and the conversion of electrical energy from DC to DC that step up the voltage from its input supply to its output load together characterise the function of a Power Bank. The critical aspect of storage of electrical energy is what distinguishes an accumulator from a static converter. In view of the aforesaid, we hold that the Power Bank traded by the Appellant is classifiable as an accumulator under Chapter heading 85.07.

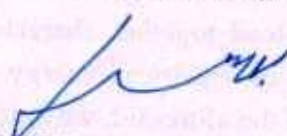
19. Our view as detailed above is reinforced by the recent changes in the GST rates for goods under Chapter 85.07. With the onset of GST, Notification No 01/2017 IT (R) dt 28.06.2017 prescribed a GST rate of 28% to the goods listed in Schedule IV of the said Notification. As per Sl.No 139 of Schedule IV the goods described as "Electric accumulators, including separators thereof, whether or not rectangular (including square)" falling under Chapter Heading 85.07 attracted GST rate of 28%. The description of goods at entry Sl.No 139 (Chapter Heading 85.07) was substituted vide Notification No 18/2017 IT (R) dated 26.07.2018 to read as: "Electric accumulators, including separators thereof, whether or not rectangular (including square) other than Lithium-ion battery." The said Notification inserted an entry Sl.No 376AA in Schedule III for Lithium-ion batteries classifiable under Chapter Subheading 8507 60 00. By this insertion in Schedule III, Lithium-ion batteries became chargeable to 18% GST.

20. In December 2018, further amendment was made to the entry Sl.No 139 of Schedule IV by virtue of Notification No. 24/2018 IT (R) dt 31.12.2018, whereby, the description of goods against entry Sl.No. 139 (Chapter Heading 85.07) was amended to read as "Electric accumulators, including separators thereof, whether or not rectangular (including square) other than Lithium-ion battery and other Lithium-ion accumulators including Lithium-ion power banks." Therefore, Lithium-ion Power Bank (85.07) was not chargeable to 28% GST rate. By the same Notification, the goods "Lithium-ion accumulators (other than battery) including lithium-ion power bank" falling under Chapter Heading 85.07 was inserted as a new entry Sl.No 376AAA in Schedule III where the GST rate is 18%. From the above changes to the GST rates, it is seen that the goods "Lithium-ion battery" and "Lithium-ion accumulator including Lithium-ion power bank" were carved out from the original category "Electrical accumulators". The Lithium-ion battery was classified under 8507 60 00 while the Lithium-ion Power bank was classified under 85.07. This corroborates our findings that Power Bank was always considered as an accumulator and never a Static Converter. With the tariff Notification No 24/2018 IT (R) dated 31.12.2018, the issue of classification of Power Bank under Chapter Heading 85.07 gets settled.

21. In view of the above we pass the following order

ORDER

We uphold the order NO.KAR ADRG 01/2019 dated 22/01/2019 passed by the Advance Ruling Authority and appeal filed by the appellant M/s. Xiaomi Technology India private Ltd, stands dismissed on all accounts.


(D.P.NAGENDRAKUMAR)

Member
Karnataka Appellate Authority


(M.S. SRIKAR)

Member
Karnataka Appellate Authority