

Sl. No. 154

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar, Member (Judicial) & Sh. Rakesh Bali, Member (Administrative)

Misc. application No.: 248 /ATVAT/21

Appeal No.: 52/ATVAT/18

Date of Orders: 05/01/2022

M/s. Epson India Private Limited
101-104, 1st Floor,
Hemkunt Chambers,
No.89, Nehru Place,
New Delhi – 110 019.

.....Appellant-Applicant

V.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel Representing the Appellant : Ms. Ashwini Chander
Shekhar
Counsel representing the Revenue : Sh. P.Tara

ORDER

(on Stay Application U/s 76(4) of DVAT Act)

1. This order is to dispose of application u/s 76(4) of DVAT Act filed with appeal No. 52/18, with the prayer for entertainment of this appeal, without calling upon applicant-appellant to deposit any amount by way of pre-deposit.

Narinder Kumar
5/1/22

Rakesh Bali

2. Applicant-appellant is a dealer in the business of computers and its peripherals including printers. It stands registered with department of Trade and Taxes vide TIN No. 07680236778.
3. The applicant-appellant is feeling aggrieved by order dated 22/12/17 passed by Ld. OHA while disposing of objections u/s 74 of DVAT Act.
4. Ld. OHA, vide impugned order, directed the applicant – appellant to deposit tax and interest, in terms of the assessment made by the Assessing Authority on 14/03/15 as regards goods i.e “Multi Functional Printers/ Machines” (herein after referred to as MFPs).
5. On 14/03/15, the Assessing Authority observed that the dealer- assessee was found to have sold different types of MFPs by charging VAT @ 5%, while these items are not covered by the items available in Schedule III of DVAT Act. He further observed that as per determination already made vide No. 158 dated 13/12/07, MFPs are taxable @ 12.5%, same being unclassified/ unspecified items.
6. It may be mentioned here that Assessing Authority, also imposed penalty on the dealer u/s. 33 read with Section 86(12) of DVAT Act.

7. While disposing of the objections, Ld. OHA also found that MFPs / machines are not covered by entry No. 41A Sl. 3 of Schedule-III of DVAT Act, 2004, and as such upheld the observations made by the Assessing Authority.
8. Hence this appeal, which is accompanied by the application u/s 76(4) of the Act.
9. Arguments heard. File perused.
10. In the application, dealer-applicant has alleged that Ld. OHA passed the impugned order erroneously and against spirit of law and that legally no tax is due from it; that prima-facie, the dealer has a good case, and also that balance of convenience also lies in favour of the applicant.
11. Case of the applicant-appellant as per averments in the Memorandum of Appeal is that MFP is exigible to tax @5% as provided under entry 41A under Schedule III of the Act.
Sl. No. 3 available under entry 41A of Schedule-III of the Act reads as follows:-

“41 A. Information Technology products as per the description in column (2) below, as covered under the headings, or sub-headings mentioned in column (3), as the case may be, of the Central Excise Tariff Act, 1985 (5 of 1986).”

Sl. No.	Description	Central Excise Tariff Heading
(1)	(2)	(3)
3.	<p>Automatic data processing machines and units thereof, magnetic or optical readers, machines for transcribing data into data media in coded form and machines for processing such data.</p> <p>Analogue or hybrid automatic data processing machine, Electronic Diaries, Portable digital automatic data processing machine, personal computer, computer systems including personal computers, other Digital automatic data processing machines comprising in the same housing at least a central processing unit and an input and output unit whether or not combined, micro-computer/processor, large/ mainframe computer, computer presented in form of systems, digital processing units, storage units, input units, output units, Teletypewriter, Data entry terminal, Line printer, Dot matrix printer, Letter quality daisy wheel printer, Graphic printer, Plotter, Laser jet printer, Key board, Monitor, storage units, floppy disc drive. Winchester /hard disc drives, Removal/ exchangeable disc drives, magnetic tape</p>	8471

	drives, Cartridge tape drive, other units of automatic data processing machines, Uninterrupted power supply units (UPS)	
--	---	--

12. Appellant has also referred to entries No. 8443, 84433100, 8471 & 84716029 of Central Excise Tariff Act, 1985.

13. In support of its case, applicant has relied on following decisions:

- i. Canon India (P) Ltd. v. State of Tamil Nadu, 2017 (355) E.L.T. 110 (Mad.);
- ii. Ricoh India Ltd. v. Commissioner 2012 SCC Online Delhi 2579;
- iii. Sony India Pvt. Ltd. v. Commissioner of Trade and Taxes 2015 224 DLT 625;
- iv. CIT v, National Taj Traders (1980) 1 SCC 370;
- v. M/s. Futura Automation, vide order No. C7.24398/06/CT dated June 29, 2006 issued by the Commissioner of Commercial Taxes, Thiruvananthapuram (Kerala);
- vi. M/s. Ricoh India Limited Order No. AR.CLR.CR. 10/05-06 dated September 30, 2005 issued by Authority for

Clarification and Advance Ruling under the Karnataka
Value Added Tax Act, 2003;

- vii. M/s. Godrej & Boyce Mfg. Co. vide order No. C7, 19685/06/CT dated June 23, 2006 issued by Commissioner of Commercial Taxes, Thiruvananthapuram (Kerala); and
 - viii. Hindustan Poles Corporation v.CCE (2006) 4 SCC 85.
14. It has also been submitted on behalf of the applicant –appellant that MFPs are classifiable under entry 41A even as per common parlance and trade parlance theory, as per decision in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam c. G.S.Pai & Co., AIR 1980 SC 611 & Indian Cables Co. Ltd. v. C.C.E as reported in 1994 (74) E.L.T. 22 (S.C.).
15. On the point of pre-deposit for the purposes of admission of appeal, sub-section (4) of section 76 of the Act provides that no appeal against an assessment shall be entertained by the Appellate Tribunal, unless the appeal is accompanied by satisfactory proof of the payment of the amount in dispute, and any other amount assessed as due from the person.

As per first proviso to sub-section (4) of section 76, the Appellate Tribunal may, if it thinks fit, for reasons to be

recorded in writing, entertain an appeal against such order without payment of some or all of the amount in dispute, on the appellant furnishing in the prescribed manner security for such amount, as it may direct.

On behalf of the Revenue, it is not being disputed that same question is to be adjudicated in other matters pending before this Tribunal and the appeals have been admitted subject to certain conditions imposed on the appellant on the point of deposit by way of security.

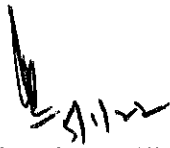
In the given facts and circumstances and the decisions cited, when the point raised by counsel for the applicant can be considered/ determined only at the time of final hearing on the basis of evidence/ documents produced on record by the parties, we are inclined to admit the appeal subject to deposit of 20% of tax and interest ^{i.e.} ~~that~~ is the disputed demand, as condition precedent, within 25 days from today.

The application is disposed of accordingly with the direction to the appellant-applicant to deposit 20% of tax and interest ^{i.e.} ~~that is~~ the disputed demand, as condition precedent, within 25 days from today. Learned counsel for the appellant to apprise the registry and learned counsel for the revenue immediately on compliance with the said order, so that on the next date that is 03/02/2022, the appeal is taken up for final arguments.

16. Copy of the order be supplied to both the parties as per rules.
One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

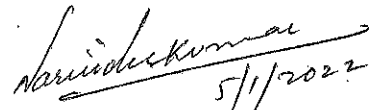
Announced in open Court.

Date : 05/01/2022



(Rakesh Bali)

Member (Administration)



(Narinder Kumar)

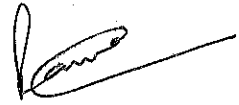
Member (Judicial)

File No. - 248/ATVAT/21
Appeal No. 52/ATVAT/18 | 1824-31

Dated: 10/1/22

Copy to:-

- | | |
|---|----------------|
| (1) VATO (Ward-208) | (6) Dealer |
| (2) Second case file | (7) Guard File |
| (3) Govt. Counsel | (8) AC(L&J) |
| (4) Secretary (Sales Tax Bar Association) | |
| (5) PS to Member (J) for uploading the judgment on the portal of
DVAT/GST, Delhi - through EDP branch. | |
| (9) Commissioner (T&T) | |



REGISTRAR