

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

Appeal No.: 148/ATVAT/10
Date of Judgment: 25/05/2022

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

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel Representing the Appellant : Ms. Ashwani
Chandrasekaran.
Counsel representing the Revenue : Sh. M.L. Garg

JUDGMENT

1. Present appeal has been filed by dealer – assessee, having Tin No. 07680236778, against determination order dated 9/3/2010 passed by Commissioner (Trade & Taxes).
2. Dealer – assessee filed an application before Commissioner (Trade & Taxes) on 11/09/2009, u/s 84 of Delhi Value Added Tax, 2004 (hereinafter referred to as the DVAT Act) seeking determination of the following question :



“Whether multi-function printers used in conjunction with a computer system are covered under Entry 41A(3) of the Third Schedule to the Delhi Value Added Tax Act, 2004?”

3. In order dated 9/3/2010, it finds mentioned that DR representing the Revenue Department submitted that already an order in the case of Ricoh India Ltd. vide No. 158/CDVAT/2007/176 dated 13/12/2007, on the said issue had been passed and that as per sub-section (8) of section 84 of DVAT Act, no such question shall be entertained for determination under the section.

Learned Commissioner (Trade & Taxes) disposed of the application u/s 84 of the Act by observing in the manner as :-

“I have perused in detail the application filed u/s 84 of the Act and heard both the parties. The order passed by the Court vide No. 158/CDVAT/2007/176 dated 13/12/2007, wherein the item in question was held taxable @ 12.5% had been correctly determined and the same shall apply on this case too. Held accordingly.”

4. Sub section (8) of section 84 of DVAT Act, reads as under :



“If any such question arises from any order already passed under this Act or under the Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi

Act 9 of 1999) or the Delhi Tax on Entry of Motor Vehicles into local areas Act, 1994 (Delhi Act 4 of 1995), as then in force in Delhi, no such question shall be entertained for determination under this section but such question may be raised in an objection or appeal against such order.”

5. As noticed above, dealer has challenged order dated 09/03/2010 passed by learned Commissioner (Trade & Taxes) on the application filed by the dealer u/s 84 of DVAT Act, 2004. This is not a case of framing of assessment by the Assessing Authority or challenging of same before learned OHA.
6. Undisputedly, the question raised by the dealer in the application u/s 84 of the Act already stood determined in case of M/s Ricoh India Ltd. vide No. 158/CDVAT/2007/176 dated 13/12/2007.
7. In **Ricoh India Ltd.’s** case, following question was required to be determined:

“Whether the multi-functional printers/machine-their spares-consumables, during the period 01/04/2005 to 31/03/2007, are taxable under Entry No. 48A of the 3rd Schedule of DVAT Act 2004 or are taxable under the residuary head @ 12.5%.”



The Commissioner determined the question.

Feeling aggrieved by the determination u/s 84 of DVAT Act, the dealer- Ricoh India Ltd. filed appeal before Appellate Tribunal. The Appellate Tribunal upheld the finding of the Commissioner that multi-functional printers/copiers/scanners having HSN Code No. 8471.60.29 and sales of spares and consumables of the above products having HSN Code No. 8473.30.99 during the period 01/04/2005 to 31/03/2007 are taxable under the residuary head and attract Value Added Tax @ 12.5% and do not fall under Entry No. 41A of 3rd Schedule of DVAT Act.

The dealer-Ricoh India Ltd. filed appeal with the prayer that the order passed by the Commissioner be set aside.

Feeling dissatisfied with the judgment passed by the Appellate Tribunal, the dealer, i.e. Ricoh India Ltd. filed appeal u/s 81 of DVAT Act before the Hon'ble High Court.

So, it can safely be said that the question raised by the present dealer – M/s Epson India Pvt. Ltd. – appellant stood already determined in M/s Ricoh India Ltd.'s case.

8. The ground put-forth on behalf of the appellant, while challenging the impugned order dated 09/03/2010 passed by Learned Commissioner, is that the Commissioner passed the order without any reasons and while relying only on the earlier order passed in the case of M/s. Ricoh India Ltd.



9. Section 76 of DVAT Act provides remedy of appeal to a person aggrieved by a decision made by the Commissioner even u/s. 84 of DVAT Act and the said appeal is to be filed before the Appellate Tribunal. But this is not a case where the question raised before Learned Commissioner u/s. 84 was being raised for the first time. Undisputedly, this very question had already been determined by Learned Commissioner in the case M/s. Richo India Ltd., vide order dated 13/12/2007. As per decision in CL Micromed v. CTT (2015) Appeal No. 1487/2012 decided on 18/02/15 by this Appellate Tribunal, the determination orders are orders passed *in rem* and binding not only to the applicant but also on other dealers and sub-ordinate officers.

10. When the determination order had already been passed as regards the same question raised by M/s. Richo India Ltd., in the year 2007, same was binding not only on M/s. Richo India Ltd. but also on the other dealers and the authorities. In this situation, the same question could not be raised by the present dealer-appellant before Learned Commissioner. That is why, Learned Commissioner, while passing the impugned order observed that the question could not be entertained for determination.



11. Learned Commissioner observed in the impugned order that sub-section (8) of Section 84 was applicable. Actually, this

provision was not applicable. Sub-section (8) of Section 84 is applicable where any question arises from any order already passed under DVAT Act or the other Acts mentioned in this provision. But, present case is not the one where the question raised by the dealer-appellant can be said to have arisen from the order passed in M/s Ricoh India Ltd.'s case. Rather, this is a case where the question raised by the dealer – appellant stood already determined by learned Commissioner and the dealer-appellant raised the same question before the Commissioner u/s 84 of the Act.

12. In the given situation, the dealer- appellant could challenge the previous determination order, but the fact remains that same has not been challenged. The challenge here is to the impugned order dated 09/03/2010.
13. It is true that in para 6, Learned Commissioner, while referring to the previous determination order dated 13/12/2007, held that the question had already been correctly determined, but it may be observed that when the same question could not be raised before Learned Commissioner for determination, keeping in view its determination already vide order dated 13/12/2007, Learned Commissioner exceeded the scope by so observing, and also because Learned Commissioner, while passing the impugned order dated 09/03/2010, was not sitting in appeal as



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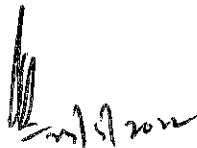
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regards the previous order dated 13/12/2007, so as to uphold the same. Therefore, these observations ^{made} / by learned Commissioner can be said to be out of context and scope.

14. As a result of the above discussion, we find that the present appeal filed by the dealer-appellant challenging the impugned order dated 09/03/2010 is not maintainable. Accordingly, the same is hereby dismissed.
15. File be consigned to the record room. 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.

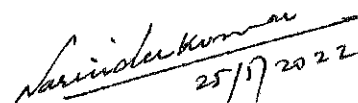
Announced in open Court.

Date : 25/05/2022.



(Rakesh Bali)

Member (Administration)



(Narinder Kumar)

Member (Judicial)



Appeal No. 148/ATVAT/10/4492-99

Dated: 26/5/22

Copy to:-

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| (1) VATO (Ward-) | (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. | |


REGISTRAR

