

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

Appeal No.: 748-771/ATVAT/13

Date of Judgment: 26/05/2022

M/s. Sharp Business System,
214-221, 2nd Floor, Ansarl Tower,
38, Nehru Place,
New Delhi – 110 020.

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel Representing the Appellant : None.
Counsel representing the Revenue : Sh. M.L. Garg

JUDGMENT

1. Dealer-Appellant, named above, has filed above captioned 24 appeals. The dealer was registered with the Department of Trade & Taxes, Delhi, vide Tin No.- 07770227950.
2. As per the case of the dealer, this company is engaged in the business of/trading of electronic products, Computer hardware, printers, fax, Xerox machines etc. The 24 appeals have been filed feeling aggrieved by impugned order passed by Ld. OHA, Special Commissioner-I, on 02-09-13.

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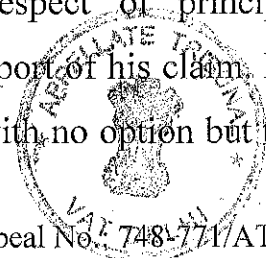


- ✓ 3. Vide impugned order, Ld. OHA disposed of 24 objections filed by the dealer. The objections were against the notices of default assessment of tax, interest and penalty. 12 notices of default assessment pertained to levy of tax and interest u/s 32 of DVAT Act, whereas the other 12 objections pertained to imposition of penalty u/s 33 of DVAT Act.
4. All the assessments pertained to the assessment year 2008-09.
5. Assessing Authority-VATO, issued notices of default assessment of tax and interest, after issuance of 3 notices u/s 59(2) of DVAT Act, for the aforesaid tax period.
6. Assessments were framed by the Assessing Authority, while observing in the manner as:

“The dealer was issued notice u/s 59(2) for seeking additional information for the sale of Multipurpose/ Multi-Functional Printers/Devices during the year 2008-09, vide notices dated 09-02-2012, 15-02-2012 and 26-04-2012. As per return, it has been observed that the dealer has made local sale of Multipurpose/Multi-functional Printer for Rs. 2,03,31,112/- @ 4%. An opportunity/SCN date 18-05-2012, has been given to the dealer in the light of the order of Hon'ble Delhi High Court dated 04-05-2012, to clarify the principal or dominant purpose of machine. The dealer has failed to provide the documentary/ technical specification evidence in respect of principal or dominant purpose of the machine in support of his claim. Hence, in the absence of documents, I am left with no option but to treat

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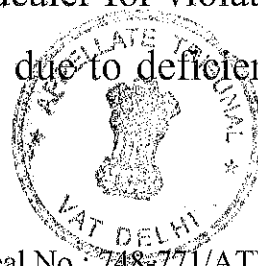


the sale of Multipurpose/Multi-Functional Printers/Devices under other, general category or residuary tax rate i.e. 12.5%. The default assessment u/s 32 of DVAT Act, 2004, is framed and the sale of Rs. 20331112/- is taxed @12.5%. Therefore, the dealer is liable to pay differential VAT @8.5%, with interest @15% p.a., under the provision of section 32, read with section 34, of DVAT Act 2004.”

7. The following table depicts demands towards tax plus interest and penalty, as raised by the Assessing Authority:

Period to which objection relates & Amount in Dispute	2008-09	Tax + Interest	Penalty
	April	5,58,032/-	7,28,929/-
	May	4,09,423/-	5,30,264/-
	June	6,47,213/-	8,28,383/-
	July	7,61,632/-	9,58,438/-
	Aug.	9,85,476/-	12,24,586/-
	Sept.	11,61,823/-	14,17,572/-
	Oct.	6,77,567/-	8,15,874/-
	Nov.	9,38,820/-	11,14,875/-
	Dec.	5,29,927/-	6,17,020/-
	Jan.	3,29,587/-	3,78,077/-
	Feb.	7,05,082/-	7,96,262/-
	March	25,33,506/-	28,16,874/-

8. It may be mentioned here that separate notices regarding levy of penalty, u/s 33 of DVAT Act, were issued by the Assessing Authority and penalty was imposed on the dealer for violation of provision of section 86(12), of DVAT Act, due to deficiency of tax.



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9. One of the grounds raised in the memorandum of appeal is that the learned OHA has erred in law and on facts in not appreciating that appellant is dealing in multifunctional printers devices and it falls under entry No. 41A of the third schedule of DVAT Act on providing interpretation to the product so treated and in having treated that multifunctional printers shall fall in the unspecified item and taxable @ 12.5%.

Case of the dealer-appellant is that dominant feature of the multifunctional devices which are attachment to computers in printing. The multifunctional devices are reflecting advancement of technology and they also fulfil criteria of the IT product to fall in the category of entry no. 41A of the third schedule of DVAT Act.

Appellant has alleged that learned OHA over assumed that there is a huge price difference between printers and multifunctional devices just because it has extra features and facilities but it remains a devise to be used as a printer.

10. It may be mentioned here that in this set of appeals while the appeals remained pending for final arguments, none appeared on behalf of the appellant on 7 dates, from 02/03/2022 to 19/05/2022 to advance arguments. Ultimately, arguments have been advanced only by learned counsel for the Revenue.



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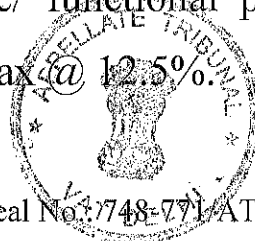
11. We have carefully gone through the record.

Discussion

12. As noticed above, default assessment of tax and interest came to be framed after issuance of four notices u/s 59(2) of DVAT Act. As observed by learned Assessing Authority, vide said notices additional information was sought from the dealer in connection with sale of multipurpose/ multifunction printers/ devices during the year 2008-2009. The reason for seeking such additional information was that the dealer had made sale of said items charging tax only @ 4%, as available from the written filed by the said dealer.

As is further available from the order passed by the assessment framed by the Assessing Authority, in view of order dated 04/05/2012 passed by the Hon'ble High Court, one more opportunity was granted to the dealer-appellant by way of show-cause notice dated 18/05/2012, to appear and clarify the principal or dominate purpose of machine, but the dealer-appellant failed to provide any documentary/technical specification in respect thereof.

Learned Assessing Authority accordingly observed that he had no option, but to treat the multipurpose/ functional printer/ device under Residuary Entry exigible to tax @ 12.5%.



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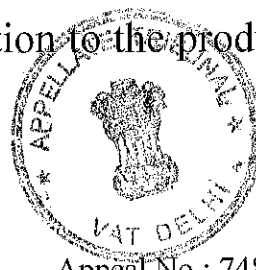
For the same reasons, assessment of penalty was also made.

13. When the matter came up before learned OHA by way of objections u/s 74(6) of DVAT Act, it was submitted on behalf of the dealer-objector that sufficient opportunity was not afforded by the Assessing Authority before making of assessment.

Notwithstanding absence of the appellant before us, we have considered this objection raised before Learned OHA and find that objection has rightly been rejected.

As noticed above, several notices were issued by learned Assessing Authority to the dealer-assessee, but it opted not to participate in the assessment proceedings. Therefore, it cannot be said that no sufficient opportunity was granted by learned Assessing Authority to the dealer-assessee before making assessments.

- As noticed above,*
14. / One of the grounds raised in the memorandum of appeal is that the learned OHA has erred in law and on facts in not appreciating that appellant is dealing in multifunctional printers devices and it falls under entry No. 41A of the third schedule of DVAT Act on providing interpretation to the product so treated



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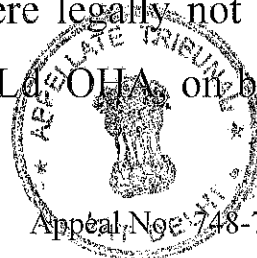
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and in having treated that multifunctional printers shall fall in the unspecified item and taxable @ 12.5 %.

Case of the dealer-appellant is that dominant feature of the multifunctional printer devices which are attachment to computers; that the multifunctional devices are reflecting advancement of technology and they also fulfil criteria of the IT product to fall in the category of entry no. 41A of the third schedule of DVAT Act.

Appellant has alleged that learned OHA over assumed that there is a huge price difference between printers and multifunctional devices just because it has extra features and facilities but it remains a devise to be used as printer.

15. When the objections came up before the Ld. OHA, challenging the aforesaid demands towards tax, interest and penalty, it was contended on behalf of the Dealer-Objector that the multifunction printers are classifiable under entry 41A of Schedule ^{IIIrd} of DVAT Act, being "Input units, Output units" and the corresponding specific entry in Schedule III shall prevail over residuary entry. It was contended there that multifunction printers are understood as printers in common parlance. Accordingly, it was urged there that the demands towards tax, interest and penalty were legally not sustainable. In support of this contention before Ld. OHA, on behalf of the



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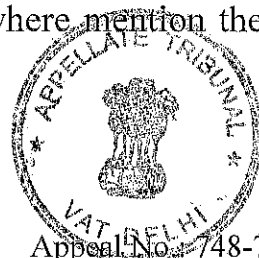
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dealer, reference was made to the decision in **Dunlop India Ltd. vs. Union of India Ltd.** 13 ELT 1566 (SC).

As observed by the Ld. OHA, substantial issue involved in the objection was of classification of devices known as Multi-Function Printers or Multi-Function Devices.

For adjudicating the issue involved, Ld. OHA relied on decision in **M/s Richo India Ltd.** STA No. 6/2010 and entry 41A of Schedule III.

16. In para. 15 and 16 of the impugned order, Ld. OHA, observed as under:

“In the present case, it can be noted that the MF Devices are understood as a product entirely different from printers, which provided a printout when connected to a computer. The devices are distinguished on basis of additionally of functions appended to them. Therefore the MF devices have established an identity quite different from printers as the same are understood in common parlance. In order to arrive at a clear decision it is to be appreciated that what makes the MF Devices different from the printers is their capability to achieve multiplicity of objectives mostly on their own technical capabilities. Moreover these devices are not called input unit, output unit, computer peripherals in common parlance. The dealers nowhere mention them as such in publicity material or invoices.



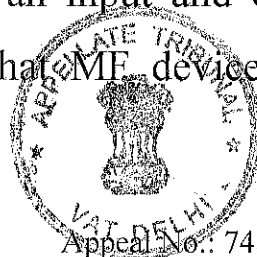
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The difference in performance capabilities and consequential difference in nature of the product is established by the price differential between printers and MF Devices. Additional capabilities have established MF Devices as a product of different character. Obviously if printing was the only need or predominant use for such devices majority of customers would not opt for a multifunction device at a much higher price. The capability contrasts the MF Device from a plain printing or copying device which performs certain input or output tasks when connected to a computing device. In fact it is seen from publicity material that the MF device have memory related to functional needs. A consumer can perform a variety of functions from the instrument panel of MF device itself without connecting them to data processing unit."

Ultimately, Ld. OHA concluded that the write-up furnished by the objector did not stand up the scrutiny of predominant function test, laid down by the Hon'ble High Court of Delhi; that the MF Devices, on basis of documentation, were found to be entirely different from the entry in the Third Schedule.

It was contended on behalf of the dealer before Ld. OHA that the devices can be covered merely as input unit, output unit. Ld. OHA did not find any merit in this contention, due to the reason that the working of these devices is much more complex and different from a printer which is an input and output device used for functioning as printer; that MF devices do not get



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covered by entry 41A, which relate to item of specific description; that the said item was thus taxable @12.5% u/s DVAT Act. 2004.

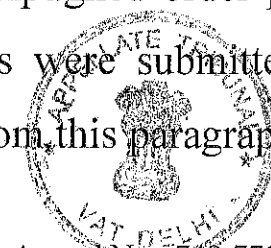
Accordingly, the Ld. OHA upheld the assessment of tax and interest framed by the Assessing Authority.

17. As noticed above, dealer-assessee was required to clarify regarding the multifunction machine/device/printer. What to say of production of any record/document, the dealer opted not to participate in the proceedings.

18. In para. 13 of the impugned order Ld. OHA observed in the manner as:

“That the documentation placed on record, bears testimony to the fact that the multifunction devices are products reflecting technological advancements, which fulfil various communication and data transfer and storage needs, related to visual and electronic communication. It would appear that several such functions, especially those concerned with documentation and finishing are capable of being performed by these machines as stand-alone devices.”

It is available from Para 13 of the impugned order passed by learned OHA that certain documents were submitted by the dealer during objections. However, from this paragraph or from



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the impugned order, it cannot be gathered as to which were said documents submitted there.

At the cost of repetition, despite opportunities, none has appeared on behalf of the appellant to assist in this regard or argue the appeals. Memorandum of appeal and the annexures do not contain any such document.

19. As noticed above, the question involved here is as to whether the product(s) sold by the appellant is or exigible to tax at the rate in respect of goods specified in the Third Schedule of DVAT Act, as per clause (b) of section 4(1) of the Act, as claimed by the appellant, or same is an unclassified goods exigible to tax at 12.5 per cent, as per rate in respect of goods covered by clause (e) of section 4 (1) of DVAT Act, as per claim of the Revenue?

As on 1.4.2005, there were 2 entries pertaining to IT products. in DVAT Act. One bearing Sr.No.41 and the other bearing Sr.No.41A.

(A) Entry No.41 of Sch. III

This entry during the period from 1.4.2015 to 8.8.20005 contained *IT products including computers, telephone and parts thereof*, and others, as described therein.



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During the period from 8.8.2005 to 31.3.2010, this entry saw changes, but still contained *computers, telephone and parts thereof* and others described therein.

From 1.4.2010 onwards, said entry still contains *computers, telephone and parts thereof*.

(B) Entry No.41 A of Sch.III of DVAT Act

This entry came to be introduced in Schedule III of DVAT Act w.e.f. 1.4.2005 and remained in force upto 29.11.2005. It contained, beside others, following IT products notified by the Ministry of Information and Technology:

“Entry No.41 (xxiii).-computer systems and peripherals,
electronic diaries”

W.e.f. 30.11.2005, this entry was amended. From 30.11.2005 to 9.5.2016, the relevant Serial No.3 of this entry read as under:-

“41A. 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.	Xxx	-
2.	Xxx	



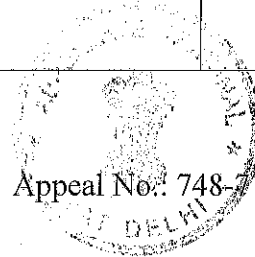
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3.	Automatic data processing machines and units thereof, magnetic or optical readers, machines for transcribing data into data media in coded form and machines for processing such data.	8471
	<p>Analogue or hybrid automatic data processing machine, Electronic Diaries, Portable digital automatic data processing machine, personal computer, computer systems including personal computer, 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.</p> <p>Winchester/ hard disc drives, Removal/ exchangeable disc drives, magnetic tape drives, Cartridge tape drive, other units of automatic data processing machines, Uninterrupted power supply units (UPS)</p>	

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Note-(1) The Rules for the interpretation of the provisions of the Central Excise Tariff Act, 1985 read with the Explanatory Notes as updated from time to time published by the Customs Cooperation Council, Brussels apply for the interpretation of this entry and the entry number 84 of this Schedule.

Note.-(2) Where any commodities are described against any heading or, as the case may be, sub- heading, and the description in this entry and in entry 84 is different in any manner from the corresponding description in the Central Excise Tariff Act, 1985, then, only those commodities described in this entry and in the entry number 84 will be covered by the scope of this notification and other commodities though covered by the corresponding description in the Central Excise Tariff will not be covered by the scope of this notification.

Note.-(3) Subject to Note (2), for the purposes of any entry contained in this notification, where the description against any heading or, as the case may be, sub-heading, matches fully with the corresponding description in the Central Excise Tariff, then all the commodities covered for the purpose of the said tariff under that heading or sub-heading will be covered by the scope of this notification.

Note.-(4) Where the description against any heading or sub-heading is shown as "other", then, the interpretation as provided in Note 2 shall apply."

Notably, w.e.f. 10.5.2016 onwards, this entry was again amended.



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Here, the dispute pertains to rate of tax for the tax periods *Tax period April 2008 to March 2009*.

Residuary entry as available in Clause (e) of sub-section (1) of Section 4 of DVAT Act reads as under:

“In the case of any other goods,

at the rate of twelve and a half paisa in the rupee:”

As per case of the Revenue, multi function machine of the dealer-appellant is not covered by entry No.41A of Schedule III of DVAT Act, and rather same is covered by the residuary entry.

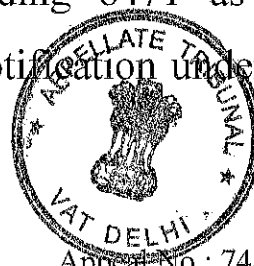
How to interpret the provisions of entry 41A (Sr.No.3) available in Sch. IIIrd of DVAT Act?

20. Significant to note that Serial No.3 of entry 41A available in Sch.III of DVAT Act, corresponding to Central Excise Tariff Heading 8471, has only one Heading and same reads as:

“Automatic data processing machines and units thereof, magnetic or optical readers, machines for transcribing data into data media is coded form and machines for processing such data.”

This serial No.3 has no Sub-Heading.

Even Central Excise Tariff Heading 8471 as available in column (3) of entry 41A of this notification under DVAT Act, has no sub-heading.



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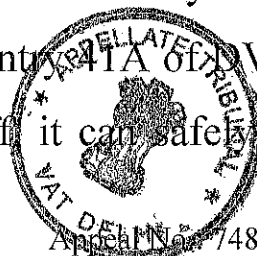
As per Note (3) of the notification under DVAT Act, *all the commodities covered for the purposes of Central Excise Tariff under a heading* will be covered by the scope of this notification, only where *description against any heading in the notification under DVAT Act* matches fully with the corresponding description in the Central Excise Tariff.

Therefore, as per Note (3) of the notification, description against heading must match fully with the corresponding description in the Excise Tariff. Here, Heading of entry 41A under DVAT Act matches fully with Heading of entry 8471 of the Excise Tariff, except the last words “ not elsewhere specified or included”. These last words do not find mention in the heading of entry 41A under DVAT Act.

In entry 8471 of Central Excise Tariff, sub headings also find mention and each sub-heading has tariff items.

Here, no sub-heading is available in column No.2 of Sr.No.3 of entry 41 A, and only description of tariff items has been given.

We have pondered over again and again as to why, while preparing this table of entry No.41A (Sr.No.3) sub headings as available under entry 8471 were not incorporated in this table, but we have no clue from anywhere in this regard. However, keeping in view that Note (2) appended to entry 41A takes note of difference between the two i.e. entry 41A of DVAT Act and entry 8471 of Central Excise Tariff it can safely be said that



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had sub-headings been there in entry 41A, the task of classification and comparison of the contents of the entries would have become easier.

21. Be that as it may, for the purpose of classification of a product, we have to refer to relevant section notes and relevant chapter notes.

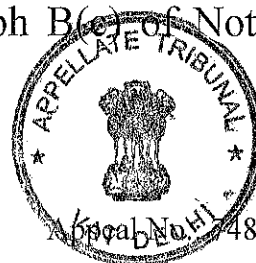
As per Note 5 (C) of said Chapter, separately presented units of an automatic data processing machine are to be classified in heading 8471.

As regards printers, Special Note i.e. 5 (D) has been made available in Chapter 84. Note 5 (D) provides that printers, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, are in all cases to be classified as units of heading 8471.

22. Condition as stipulated in paragraphs (B)(b) of Note 5 reads as under:

“(b) It is connectable to the central processing unit either directly or through one of more other units;”

Condition as stipulated in paragraph B(c) of Note 5 reads as under:



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“(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.”

Note 5(E) provides :

“Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the heading appropriate to their respective functions *or, failing that, in residual heading.*”

Claim of the Dealer

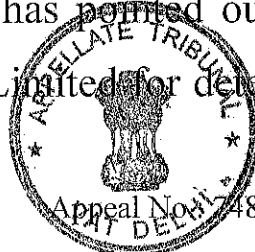
23. As per claim of the dealer, its items were covered by “input and output units” and as such exigible to tax only at the rate prescribed for items falling against Sr.No.3 of entry No.41A of DVAT Act.

Claim of the Revenue

24. Revenue has termed the device of the dealer as Multifunction device or machine and claimed that that since “multi functional device or machine” does not find mention in entry 41A, same is exigible to tax under residuary entry.

Determination of question under section 84 of DVAT Act- Its binding effect.

25. Learned Counsel for the Revenue has pointed out that in the application moved by Ricoh India Limited for determination of



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question u/s. 84, case of the applicant was that multifunction printers, copiers, scanners fall under HSN Code No. 8471.60.29 and the spares and consumables fall under HSN Code No. 8473.30.99.

On behalf of the Revenue, it has been submitted that this is a case where assessment has been made on the basis of determination order passed by Learned Commissioner, Department of Trade and Taxes, u/s. 84 of DVAT Act.

The submission is that the question raised for determination under section 84 was the very question which has been raised by the dealers herein and further that when the order answering the said question has been upheld by our own Hon'ble High Court in Richo India Ltd.'s case, the same is binding in Delhi on all the dealers.

26. In this regard, it is significant to note that here in this matter, from the very beginning case of the dealer has been that its product is a Multifunction machine or device, and department has treated the same as such, but held the same exigible to higher rate of tax on the ground that expression or commodity or item known as "Multifunction machine or Device "does not find mention in entry 41 A(Sr.No.3) of DVAT Act.



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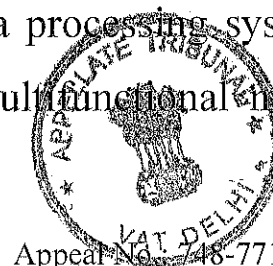
In **Xerox India Limited v. Commissioner of Customs, Mumbai**, (2010) 14 SCC 430, it was undisputed that the multifunctional machines met the requirements of Chapter Note 5(B)(b) and(c) as they were connected to a central processing unit and could accept and deliver unrecognizable data. The dispute there was as to Chapter Note 5(B)(a).

Keeping in view the nature of the functions the multifunctional machines perform, Hon'ble Apex Court held that those multifunctional machines would serve as input and output devices of an ADPM(computer) and thus would serve as a unit of an ADPM and as such fell under Sub-Heading 8471.60 of the Act.

As per Section Note, expression "machine" means any machine, machinery, plant equipment, apparatus or appliance cited in the heading of Chapter 84 or 85.

Even though Xerox case pertained to classification of tariff item under Customs Tariff, the ratio decided/ the law laid down by Hon'ble Apex Court in that case is binding on all the courts and even on this Appellate Tribunal.

As per Chapter Note 5(B)(a), a unit must be of a kind solely or principally used in an automatic data processing system. It is not case of the appellant that its multifunctional machine is



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“used **in** an ADP system”. The case is that the multifunctional machine is “used **with** an ADP system” as “input/ output units.”

27. What about application of Sub-heading 8471 50 00 and sub-heading 8471 60 of Central Excise Tariff?

Sub-heading 8471 50 00 reads as under:

“Digital processing units other than those of subheadings 8471 41 or 8471 49, whether or not containing in the same housing one or two of the following types of unit :

storage units,

input units,

output units.”

Sub-heading 8471 60 reads as under:

“Input or output units, whether or not containing storage units in the same housing:”

28. The contention of the Learned Counsel for the Revenue is that our own Hon’ble High Court in *Richo India Ltd.’s* case observed that on comparison of input unit and output unit available in column No. 2 with entry 8471, it can be gathered that the description is not identical, as there is no reference to “storage unit” in column no. 2 of the notification.



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As further submitted, Hon'ble High Court held that Multifunction machine (s) / Printer (s) will not fall under any of the sub heading, but fall under the residual - 8471.60.29 i.e. "others".

Note 5(D) of Chapter 84 specifically provides that "printers, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (B)(b) and (B)(c) above, -(for being termed to be a part of a complete digital data processing system)-are in all cases to be classified as units of heading 8471"

Here, case of the dealer is that the machine/device sold is combination of input and output units.

In column (2) of Sr.No.3 of entry 41A of DAVT Act, expressions "Digital processing units", "storage units", "input units" and "output units" have been independently described .

When description of this tariff item 8471 50 00 does not match fully with the description of goods as available in column (2) of entry 41A, *from the point of Central Excise Tariff*, in view of Note (2) appended to the notification, the tariff item 8471 50 00 *"Digital processing units(other than those of subheadings 8471 41 or 8471 49), whether or not containing in the same housing one or two of the types of storage units, input units,*



output units, will not be covered by the scope of the notification available in DVAT Act.

When we peruse *the detail of the commodities mentioned in column (2), Sr.No.3 of entry 41A of Schedule III*, and apply what is provided in Note (2) of the notification, under DVAT Act, machine or device having multifunctions having a predominant function, even though considered as an individual item, being “input units” and “output units” having description only in the said entry 41A (Sr.No.3) would fall in this entry.

29. In Xerox’s case, the dispute pertained to Customs duty. There, interpretation of entries available only in Central Excise Tariff was called for. Here, interpretation of entry under DVAT Act is also involved.

Here is a matter where there is difference between description of goods in the Central Excise Tariff and entry No.41A of DVAT Act, as sub-heading 8471 60 or the description of goods specified against it does not find mention in entry No.41A of DVAT Act. Word “combined” that finds mention in tariff item 8471 60 10 does not find mention in column (2) of entry No.41A.

30. When description of this tariff item 8471 60-00 does not match fully with the description of goods as available in column (2) of



entry 41A, from the point of Central Excise Tariff, the tariff item 8471 60 00 will not be covered by the scope of the notification available in DVAT Act, in view of Note (2) appended to the notification.

But, when we take it from other angle i.e. consider the commodities mentioned in column (2), Sr.No.3 of entry 41A , the multifunction product being “input units” and “output units”, is covered by the notification. In view of Note (2) of the notification, under DVAT Act, the item even though having description as an individual unit (and not as combined input or output unit), the multifunction machine or device would not fall in residuary entry.

31. In entry 8471 of Central Excise Tariff, word “printer” for the first time appears under sub-heading 8471 60 and particularly below the expression-item “8471 60 10 i.e. combined input or output units”.

Under the sub-heading “combined input or output units”, following printers find mention :

8471 60 21 ----- Line printer

8471 60 22 ----- Dot matrix printer

8471 60 23 ----- Letter quality daisy wheel printer

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8471 60 24 ---- Graphic printer

8471 60 25 ---- Plotter

8471 60 26 ---- Laser jet printer

8471 60 27 ---- Ink jet printer

“Scanner^s” finds mention against tariff item 8471 60 50 and as an input unit.

Laser jet printer is an output unit. Scanner is an input unit. When both these are combined, the said machine falls in sub-heading 8471 60.

But, it is significant to note that Sub-heading 8471 60 i.e. *“input or output units, whether or not containing storage units in the same housing”* does not find mention at all in Entry No. 41 A of Schedule Third of DVAT Act.

On comparison of sub-heading available under heading 8471, with the tariff items which find under the heading of Entry No. 41A (S. No. 3), it is found that word “laser jet printer” finds mention as tariff item 8471 60 26 as available under heading 8471 of First Schedule of Central Excise Tariff.

However, scanner does not find mention in Entry 41A (Sr.No.3) of Schedule Third of DVAT Act.



On further comparison, it is found that tariff items "*line printer, dot matrix printer, letter quality daisy wheel printer, graphic printer, plotter, laser jet printer, ink jet printer, other, monitor, keyboard, scanners, mouse and other*" fall under sub-heading "input or output units, whether or not containing storage units in the same housing", as available under sub-heading 8471 60 of Central Excise Tariff.

But, in Entry 41A of Third Schedule of DVAT Act, only "*line printer, dot matrix printer, letter quality daisy wheel printer, graphic printer, plotter, laser jet printer, monitor*" find mention.

In Entry 41A, by way of addition *Teletypewriter, Data entry terminal* find mention with the aforesaid other items.

This comparison would reveal the difference as regards these tariff items available under Schedule Third of DVAT Act and the tariff items as placed under the heading 8471, its sub-heading and the tariff items of the Central Excise Tariff.

Copier

So far as "copier" is concerned, suffice it to observe that it does not find mention under any sub-heading or tariff item of



heading 8471 or in any of the goods described in column (2) of entry 41A (Sr.No.3) of Schedule Third of DVAT Act.

If a multiple function device has any predominant or principal function? If so, when and its effect?

32. As per note (7), Chapter 84 of Central Excise Act a machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose.

This Note further provides that subject to Note 2 to this Chapter and Note 3 to Section XVI, a machine, the principal purpose of which is not described in any heading or for which no one purpose is the principal purpose is, unless the context otherwise requires, to be classified in heading 8479.

It is to be seen as to whether the machine of the dealer has any principal purpose, as claimed by the dealer, or it is a machine where no one purpose is the principal purpose, as claimed by the Revenue.

33. In Xerox's case (2010) 14 SCC 430, having regard to the submission on behalf of the dealer that up to 85% of printer-related components were present in the machine and they were to function as printers, and as such the machines in dispute



were required to be classified only under this heading 84.71, Hon'ble Apex Court while interpreting the relevant provisions for classification of imported machines Xerox Regal 5799 and Xerox XD 155df models, under sub-heading 8471.60 of the Customs Tariff Act, 1975, was of the view that printing function emerged as the principal function and same gave the said multifunctional machines its essential character.

Hon'ble Apex Court also observed that Chapter Note 5(D) which included printers under heading 8471 was also relevant as predominant components of the devices in that case related to printing function.

Here, as noticed above despite repeated notices, the dealer failed to provide to Assessing Authority any document like copy of brochure of the commodity or chart describing manufacturing cost allocated to printing.

It may be mentioned here that some of the documents came to be filed on behalf of the appellant(s) before Learned OHA, but their details or description is not available.

No document which could be of some assistance on the point of classification has been submitted by the appellant before this Appellate Tribunal.



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Contentions on behalf of Revenue

34. As regards the percentage of the parts used in the multifunctional machines, Learned Counsel for the Revenue has submitted that in Xerox India Ltd's case, Hon'ble Apex Court recorded the findings that multifunctional machines therein had 84% or 74% parts of a computer printer and, as such output devices were covered under Entry No. 8471.60.
35. As noticed above, in Xerox case (2010), it was on the basis of percentage of parts and components coupled with manufacturing cost allocated to printing, Hon'ble Apex Court observed that the principal function of the machines-subject matter of that case-was printing and said function provided its essential character to the multifunctional machine.

Taking a cue from the decision in Xerox case, note 7 of Chapter 84 and applying the same to the facts of present case, it can safely be said that where principal function of a multiple function device is "printing", the multiple-function of such a device is to be treated as printer and exigible to tax prescribed for items mentioned in Entry No. 41 (Sl. No. 3) of DVAT Act;

^{out-}
Laser Jet Printer as an input unit falls in Sr.No.3 of Entry 41A of DVAT Act's schedule III and in tariff item 8471 60 26 of the Central Excise Tariff.



It is significant to note that no two input or output units from 8471 60 onwards as available in Central Excise List find mention in entry No.41A of DVAT Act. Laser Jet Printer finds mentioned in column No. (2) of entry No.41 A but as a single ^{out-}input unit.

Column No. (2) of entry No.41 A does not require that Laser Jet Printer must be accompanied by another output or input unit to be exigible to pay tax as per this Schedule III.

36. In view of what is contained in Note (3) of the notification pertaining to entry 41 A(Sr.No.3), under DVAT Act, when description of Laser Jet Printer matches fully with the corresponding description of Central Excise Tariff item 8471 60 26, and entry No.41(Sr.No.3) does not stipulate that Laser Jet Printer must be combined with some input unit, this tariff item can safely be held to be covered by Column No. (2) of Sr. No. 3 of Entry 41A, even as individual output unit.

Notably, even in case of any difference, as per Note (2) Laser Jet Printer, as an individual output unit, cannot be taken to the residuary entry.

37. In other words, Laser Jet Printer, even as single ^{out-}input unit is covered by Entry 41 A(Sr.No.3). it would still ^{fall in} be in this entry,



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in the form of
even if a multiple function device, when its pre-dominant
function in printing.

In view of the above discussion, we hold that

- (a) a laser jet printer is covered by the expression "Unit of heading 8471" (as per note 5(D) of Chapter 84) and a commodity described in column (2) of Entry 41 A of DVAT Schedule III; and
- (b) that a machine or device may be having more than one function, but keeping in view its predominant function, for example, if it is "printing", said multifunction machine or device having Laser Jet Unit as one part would not fall in residuary entry.

Classification of the product of the dealer with effect from 01/01/2007.

38. In Ricoh India Limited v. Commissioner, 2012 SCC OnLine Del 2579, keeping in view the above amendment made in Entry No.8471.60 with effect from 1st January, 2007, Hon'ble High Court held that multi- functional machines have been specifically classified under the tariff head 8443 and are no longer classified under the head 8471.60.

39. Here is a matter where some of the commodities or goods mentioned in the sub-headings of Entry No.8471 of Central



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Excise Tariff Act, 1985 were described in column (2) of entry 41 (Sr.No.3) of DVAT Act, w.e.f. 30.11.2005 to 9.5.2006 and from 10.5.2006 to 31.12.2006, but w.e.f.1.1.2007 some of the goods earlier described in sub-headings of entry No.8471 were described in entry No.8443 of Central Excise Tariff Act, 1985. However, no corresponding amendment has been made in the description of goods which find mention in column (2) of entry 41 (Sr.No.3) of DVAT Act.

Even no fresh notification has been issued to amend Third Schedule of DVAT Act consequent upon transfer of certain goods from entry No.8471 to 8443 of Central Excise Tariff.

40. There is no doubt that w.e.f.1.1.2007, consequent upon amendment of Central Excise Tariff, as per clause (D) Heading 8471 does not cover the printer, copying machines, facsimile machines, whether or not combined, when presented separately, even if they meet all of the conditions set forth in paragraph (C), this amendment is to be read only for the purposes of Central Excise Tariff, and not for the purposes of interpretation of entry 41A (Sr.No.3) of DVAT Act, the reason being that entry No.8471 of Central Excise Tariff still finds mention in entry No.41A of IIIrd Schedule of DVAT Act and has not been removed even after the amendment of Central Excise Tariff. Had the Legislature intended to exclude these items, entry No.41A would have also seen amendment in consonance with



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the amendment made in Central Excise Tariff. But, no such amendment was made in entry No.41A of IIIrd Schedule of DVAT Act.

Therefore, amendment made in Central Excise Tariff w.e.f. 1/1/2007 has no impact on the notification or sl. 3 of Entry No. 41A, where in the last column Entry 8471 of Central Excise Act still finds mentioned.

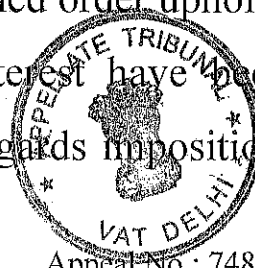
Consequently, fresh calculation is required to be made by the Assessing Authority in view of these findings.

Conclusion

41. In view of the above findings, the impugned assessments and the impugned order upholding the same are set-aside and learned Assessing Authority is directed simply to make fresh calculations in view of the above findings, and keeping in view the information made available in the documents already submitted by the dealer – appellant before Learned OHA during objections, and accordingly issue fresh notice of assessment on the basis of said fresh calculations.

Penalty

42. As noticed above, the impugned assessment as framed by the Assessing Authority and the impugned order upholding the said assessment as regards tax and interest have been set-aside. Consequently, the assessment as regards imposition of penalty



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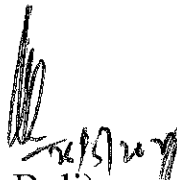
and the impugned order upholding the said penalty are also hereby set-aside.

Result

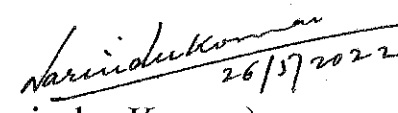
43. In view of the above findings, all the appeals are disposed of in the manner indicated above. As regards tax and interest, Learned Assessing Authority simply to make fresh calculations in view of the above findings, and keeping in view the information available in the documents already submitted by the dealer – appellant during the objections, and accordingly to issue fresh notice of assessment on the basis of said fresh calculations. Assessing Authority may have assistance of the dealer – assessee, and the latter to render assistance accordingly.
44. File be consigned to the record room. Copy of the judgment be also 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 : 26/5/2022


(Rakesh Bali)
Member (A)




(Narinder Kumar)
Member (J)

Appeal No. 748-771/ATVAT/13/4524-31

Dated: 31/5/22

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