

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

Appeal Nos. 1227-1238/2012 and ~
Appeal Nos. 1239-1250/ATVAT/2012

Date of Judgment: 26/5/2022

M/s. M. C. Modi & Co.
104, Skipper Corner,
88, Nehru Place,
New Delhi-110020.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Ms. M. K. Gandhi
Counsel representing the Revenue : Sh. C.M. Sharma

JUDGMENT

1. Present ~~124~~ appeals have been filed by the Dealer-Assesse having TIN No.-07400153512, feeling aggrieved by the order dated 18.11.2011, passed by Ld. OHA-Addl. Commissioner (Special Zone), as its ~~124~~ objections against the following demands raised by the Assessing Authority, by way of tax, interest and penalty, as regards the following tax periods, have been rejected:-

Narinder Kumar
26/5/2022

26/5/2022



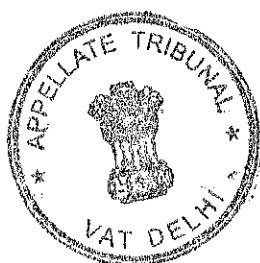
Page 1 of 42

Appeal Nos. 1227-1250/ATVAT/2012

Ref No.	Period	Tax	Interest	Penalty	Total
040250811011	April 2007	---	---	491087	491087
040325401011	April 2007	323084	140608	---	463692
040325451011	May2007	319066	134926	---	453992
040266561011	May 2007	---	---	469027	469027
040250611011	June 2007	---	---	403523	403523
040250831011	June 2007	---	---	260416	260416
040250851011	July 2007	---	---	260416	260416
040325511011	July 2007	187350	74529	---	261879
040325611011	Aug 2007	176692	68039	---	244731
040250861011	Aug 2007	---	---	236767	236767
040325661011	Sep. 2007	194233	72398	---	266631
040250871011	Sep.2007	---	---	252502	252502
040325681011	Oct.2007	221124	79605	---	300729
040250881011	Oct,2007	---	---	278616	278616
040325741011	Nov.2007	250218	86994	---	337212
040266581011	Nov.2007	---	---	302763	302763
040325831011	Dec.2007	499870	167422	---	667292
040250891011	Dec.2007	---	---	584857	584857

26/5

26/5



040325851011	Jan.2008	230229	74273	---	304502
040250911011	Jan.2008	---	---	257856	257856
040266601011	Feb2008	---	---	302457	302457
040325871011	Feb.2008	280053	86778	---	366831
040250931011	March2008	---	---	226761	226761
040325901011	March2008	218001	64863	---	282864

As per case of the Dealer-appellant, this company is engaged in the business of trading of computer,^s computer hardware and peripherals.

The above said assessments made by the Assessing Authority were challenged by the dealer before Ld. OHA on the following grounds:-

- (i) Because the impugned notice of default assessment of tax & interest is bad in law as well as on the facts.
- (ii) Because the sales figures of the objector relating to carry cases and multifunction devices/printers have been taken arbitrary^{- by} without any cogent rational.
- (iii) Because the rate of tax on both the products, namely, carry cases and multi function devices/printers has been charged @ 12.5% wrongly and arbitrarily and contrary to provisions of section 4 of DVAT Act, 2004 where^{- as} these

26/5



items are chargeable @ 4% as the same fall under third schedule of DVAT Act, 2004.

(iv) Because as per the objector's verifiable records ^{it} ~~the~~ paid tax as per law on the sale of multifunctional printers and carry cases.

2. On the point of territorial jurisdiction, Ld. OHA referred to the provisions of section 80 (3) of DVAT Act and rejected the contention raised by the Counsel that VATO (Audit) has no jurisdiction to make assessment.
3. As regards demand on multifunctional devices/printers, Ld. OHA has observed as under :-

“As the firm M/s M. C. Modi & Co. was avoiding in furnishing the details of the multi functional devices/printers sold during the year 2007-08 and having no other alternative the information obtained from the co. M/s Ingram Micro (I) Ltd. was relied upon and the amount of purchase from M/s Ingram Micro (I) Ltd was taken as the amount of sale of the firm M/s M. C. Modi & Co. As per the ledger account provided by the company M/s Ingram Micro (I) Ltd. total amount of sale made by the co. M/s Ingram Micro (I) Ltd during the year 2007-08 was Rs. 45,761,842/- most of which was relating to the MFD/Printers. The firm has made sale of MFD/Printers after charging VAT @ 4% whereas vide determination No. 158 Multifunctional Printers are held to be taxable @12.5%. Hence the sale of printers is taxed @ 12.5% Firm sells multifunctional



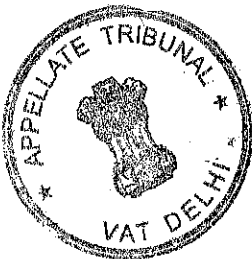
printers amounting to Rs. 24,12,277/- during the month which is taxed @ 12.5%. The amount of carry cases sold separately is taken as Rs. 2,96,300/- which is also taxed @ 12.5%."

~~On this point~~ Ld. OHA has observed that the issue stood settled by determination No.158, wherein multi functional printers are held to be taxable @ 12.5%, hence the Assessing Authority has created the demand in accordance with the determination of Commissioner. Accordingly the Ld. OHA upheld the assessment made by the Assessing Authority in this regard.

As regards levy of tax on carry ^{cases} goods, Ld. OHA rejected the contention raised on behalf of the dealer by observing ~~in the manner~~ "as regards the issue of tax on carry cases is concerned, the dealer has claimed that 2963 cases were sold alongwith laptop and do not thus attract VAT more than 4% as has been prescribed under 3rd Schedule at Entry No. 41A and only 40 cases were sold separately i.e. without the lap-top machine.

However, during the arguments dealer has claimed that the number of carry cases sold were much less then earlier informed. Therefore, there is a contradiction in the number of carry cases ascertained by VATO and the number as claimed by the Dealer.

The dealer in his written submission submitted that carry cases were sold alongwith laptops. He claims that tax can be charged at the same rate as that on laptop, i.e. 4%. The argument cannot be accepted. I am of the firm opinion that carry case is not a packing material and it falls under the category of accessory. The carry case is un-specified item attracting a tax @ 12.5%.



26/5

26/5

However, the number of carry cases sold by the dealer needs to be ascertained on the basis of record and for that purpose ends of justice will be met if the Assessing Authority is directed to examine the entire record and pass a fresh order as regard the number of carry cases sold by the dealer. In case number of carry cases are found to be less than the number contained in the assessment order, its relief can be granted.”

4. Arguments heard. File perused.

DVAT-50

5. By way of additional ground allowed to be raised as per order dated 3/3/2017 passed by this Appellate Tribunal, appellant has averred that the Audit team had no authority to conduct audit of the business affairs of the dealer for the period 2007-08, in absence of due authorization in form DVAT-50 and as such the audit proceedings are void ab-initio.
6. Undisputedly, the audit team was conducting audit of **M/s. Ingram Micro India Ltd.,** when it transpired that the said company was making sales to the dealer-appellant, i.e. **M/s M. C. Modi and Company.** As observed by learned Assessing Authority, dealer-**M/s M. C. Modi and Company** was issued notices, but the said company was avoiding furnishing details of multinational devices/printers sold during the year 2007-2008, and as such, the Assessing Authority had no option, but to rely upon the information



26/5

26/5

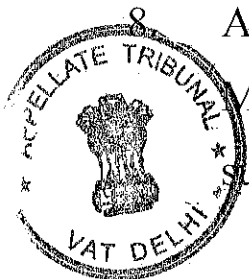
from M/s. Ingram Micro India Ltd. Ultimately, the assessments were made.

From the above, it appears that no audit was conducted at the business premises of the dealer-appellant. Consequently, there was no question of absence of authorisation in Form DVAT-50, so far as the dealer-appellant is concerned.

Territorial jurisdiction of VATO to make assessment.

7. On behalf of the dealer – appellant, it has been argued that VATO (Audit) had no territorial jurisdiction to make assessment and as such the assessment made on 24/26-7-2010 deserves to be set aside. In support of this submission learned counsel has referred to decision in **Capri Bathaid Private Ltd. v. Commissioner of Trade & Taxes, W.P. (C) 8913/2014** and circular dated 1/4/2016 issued by Commissioner (VAT). In this regard learned counsel has also placed reliance on decision in **Commissioner of Sales Taxes, UP v. Sarjoo Prashad Ram Kumar, (1976) 37 STC 533 (SC)** and **Bathla Teletech Pvt. Ltd. v. Commissioner of Trade & Taxes, 2017 SCC Online Del 9813**.

Admittedly, this matter⁸ pertains to tax period April 2007 to March 2008 and the circular referred to above is of subsequent date. Assessments were made on 24/26-07-2010.



Commissioner, VAT had earlier issued order dated 31/10/2005 u/s 68 of the DVAT Act read with Rule 48 of the Delhi Value Added Tax Rules, 2005 ('DVAT Rules'). In H.G. International v. The Commissioner of Trade and Taxes, Delhi, ST.APPL. No. 63/2014 decided on 16/8/2017 by our own Hon'ble High Court, order dated 31.10.2005 was held to have been validly issued.

Vide said Circular, learned Commissioner had delegated his powers under various provisions of DVAT Act to an officer of a particular designation. At the time, impugned assessments were made by learned Assessing Authority, the said order dated 31/10/2005 was in force. In **H. G. International's case** (supra), it was held that the order dated 31.10.2005 delegated to the VATO all the powers of an auditor u/s 58 of DVAT Act for (a) confirming the assessment under review (b) serving a notice of assessment or reassessment. Nothing to the contrary has been pointed out by learned counsel for the dealer-appellant in this regard.

In Capri Bathaid's case (supra), following common issues had arisen for consideration in the four petitions:-



“(i) Whether the AVATO Enf-I who undertook the survey, search and seizure operation and later passed the default assessment orders of tax, interest and penalty, as duly empowered to do so in terms of the DVAT Act?

26/5

24/5

(ii) Whether the AVATO Enf-I could have proceeded to reverse the ITC claimed during an earlier period and could such reversal take place in the order of default assessment for a different period?"

Therein, order in Form DVAT-50 issued by the Special Commissioner on October 15, 2014 did not permit the Enforcement Officer to carry out any assessment and therefore, orders of default assessment of tax, interest and penalty passed by the AVATO Enf-I under sections 32 and 33 of the DVAT Act were held to be without the authority of law.

In that case, order issued under Section 68 of DVAT Act was dated 12th November 2013. Present case is not covered by the said order of 12.11.2013.

Therefore, decision in Capri Bathaid's case (supra) does not come to the aid of the dealer-appellant.



In view of the above discussion, decision in **Commissioner of Sales Taxes, UP(supra)** and **Bathla Teletech Pvt. Ltd.'s case (supra)** also do not come to the aid of the dealer.

Multifunction Machine

9. Learned counsel for the dealer – appellant has contended that this is a case where all the products taken into consideration by the Assessing Authority were not multifunction printers and rather the same included ordinary printers. In this regard, learned counsel for the appellant submitted that an affidavit of the representative of the dealer, during pendency of this appeal be taken into consideration.
10. 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.



Appeal Nos. 1219-1250/ATVAT/2012

(A) Entry No.41 of Sch. III

This entry during the period from 1.4.2005 to 8.8.2005 contained *IT products including computers, telephone and parts thereof*, and others, as described therein.

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	-
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
	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,	

21
26/5

21/5



	Key board, Monitor, storage units, floppy disc drive.	
	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)	

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

11
26/5

1
26/5

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.

11. Here, the dispute pertains to rate of tax for the tax period~~s~~ ✓
~~Tax period~~ April 2007 to March 2008.

As per case of the dealer, the disputed demand also includes demand on its turnover as regards the multi-functional machine or device and for the period, when notification dated 30.11.2005 as regards entry No.41A of DVAT Act came into force.

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 paise 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?

12. Answer is available in Note (1) -already reproduced above- which is part of entry 41A of the schedule in DVAT Act.

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. It is reproduced for convenience:

“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.”

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.

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

13. 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.



22
26/5

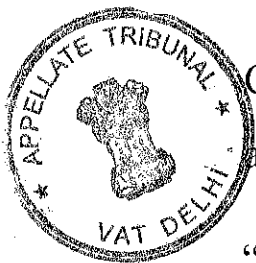
22/5

On behalf of dealer, reference has been made to Harmonized Commodity Description and Coding System, as available in Vol.3, 3rd Edi. (2002) as published by World Customs Organisation. This volume contains relevant section XVI; this section contains the relevant chapter 84; and chapter 84 contains the relevant entry 84.

For the purposes of heading 8471, Chapter 84 of Central Excise Tariff, defines the expression "automatic data processing machines".

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.



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;”

26/5

21/5

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

“(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

14. As per claim of the dealer, the ^{*- multifunction devices*} items/ in question were multifunctional printers;

Claim of the Revenue

15. Revenue has termed the device of the dealer as Multifunction device or machine and claimed that that since “ multifunctional 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.

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

of 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.

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 Multifunction machine or device is a multifunction printer, and department has treated the same as multifunction device or machine, 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.

In **Xerox India Ltd. 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.

17. 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 there that its multifunctional machine is "used **in** an ADP system". The case is that the multifunctional machine is "used **with** an ADP system".



22
26/5

22/5

We do not find any material on record to suggest that Multifunction machine or device ^{here} falls in any of the following items which find mention in column (2) of Entry 41A (Sr.No.3) under DVAT Act:

“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.”

18. Here, while considering from the point of a digital processing machine, the product of the dealer, in addition to copying function, has three input or output functions i.e. Fax, Printer and Scanner being output and input units, but admittedly without a CPU,. So, it is not covered even by this category-item 8471 49 00.



26/5

26/5

Case of appellant is that the multifunction device in question was having combination of more than two constituent units i.e. input, namely, scanner, fax and output units, namely printer.

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, as per discussion to follow machine or device having multifunctions, 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, in view of its principal function.

Non existence of Sub heading 8471 60 and tariff item 8471 60 10 of Central Excise Tariff in entry 41 A of DVAT Act- Its effect.

19. 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.

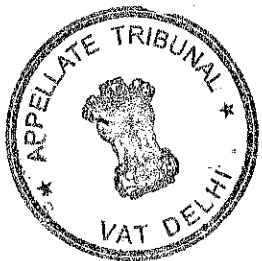
When description of this tariff item 8471 60 00 does not match fully with the description of goods as available in column (2) of entry 41A, *from the point of Central Excise Tariff*, the tariff item 8471 60 00 will not be covered by the scope of the notification available in DVAT Act, in view of Note (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.

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



26/5

26/5

8471 60 22	----	Dot matrix printer
8471 60 23	----	Letter quality daisy wheel printer
8471 60 24	----	Graphic printer
8471 60 25	----	Plotter
8471 60 26	----	Laser jet printer
8471 60 27	----	Ink jet printer

“Scanners” 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 mention 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.



26/5

2/5

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.

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

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

26/5

26/5

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

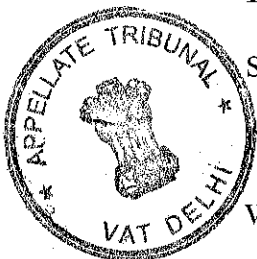
^a
If / [✓]multiple function device has any predominant or principal function? If so, its effect?

21. In this regard reference was also made to note (7), Chapter 84 of Central Excise Act which provides that 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.

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



23/5
26/5

23/5
26/5

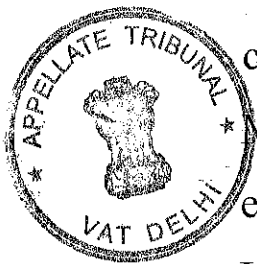
84.71, Hon'ble Apex Court while interpreting the relevant provisions for classification of imported machines Xerox Regal 5799 and Xerox XD 155df models, under sub-heading 8471.60 of the Customs Tariff Act, 1975, was of the view that printing function emerged as the principal function and same gave the 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.

Contentions on behalf of Revenue

22. 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.

23. Here, the dealer made available to this Appellate Tribunal, copy of affidavit of authorized signatory – Sh. Shyam Sunder Modi, purported to have been attested on 16/7/2014, to the effect that total purchases from M/s Ingram Micro (India) Ltd. during the assessment year 2007 -08 were as under :

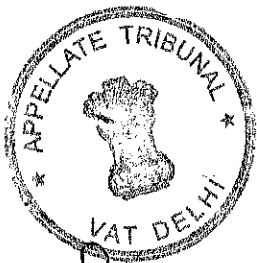


S.No.	Item	Amount
1.	MFP Printer	5,531,514/-
2.	Ordinary Printer	24,365,953/-
3.	Computer Accessories	15,864,375/-
	Total	45,761,375/-

24. This affidavit is accompanied by statement consisting of nine pages giving details of the above said items with voucher No., quantity, rate and total amount. The first page of the statement depicts names of the multifunctional printer as HP MFP 1005 AIO, HP MFP 3050 and HP MFP 3055. In the other pages names of other items, i.e. ordinary printers find mentioned.

However, dealer – appellant has not placed before us any document to suggest as to the other functions of the multifunction device.

It is significant to note that the department levied tax on the basis of determination order and because item multifunction machine/ device does not find mention in Entry No. 41A (sl. No. 3) schedule-III of DVAT Act. In other words, it was not observed by the Revenue anywhere that printing was not the pre dominant function of the said machine or that any other function was the principal function.



25. As noticed above, in Xerox case (supra), 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.

Note (7) of Chapter 84 speaks of "purpose for which the machine is used". But, as noticed above, in Xerox's case, Hon'ble Apex Court took into consideration the above factors of the multifunction machines -subject matter of that case.

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 be said that on account of principal function, multiple function machine or device is to be treated as if said principal purpose that is printing were its sole purpose.

What about Laser Jet Printer appearing as tariff item 8471 60 26 in Central Excise Tariff and also in column (2) of entry 41A under DVAT Act?

26. Laser Jet Printer as an ^{out-put} ~~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

26/5

26/5

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-put} ~~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.

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.

In other words, in view of pre-dominant function, a Laser Jet Printer, even as single ^{out-put} ~~input~~ unit is covered by Entry 41 A(Sr.No.3).



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); a laser

jet printer, is a tariff item 8471 60 26 available in Central Excise Tariff; that a laser jet printer, is a commodity described in column (2) of Entry 41 A of DVAT Schedule III as well;

- (b) that a machine or device may be having more than one function, but keeping in view its predominant function - printing, said machine or device would not fall in residuary entry.

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

27. In Ricoh India Limited (Delhi)'s case (supra) 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.

As regards this observation, Learned counsel for the dealer-appellant submitted that even though Central Excise Tariff was amended and some of the items earlier appearing in heading 8471 of Central Excise Tariff have been placed under heading 8443, no amendment having been made in column No.(2) of Entry No.41A, it cannot be said that such commodities, which have been subsequently placed under



26/5

26/5

heading 8443, no longer stand classified under heading 8471.60.

28. Learned counsel for the Revenue has referred to the observations made by Hon'ble High Court in Ricoh India Ltd.'s case, as regards non application of provisions of entry 8471 to the printers, because of the amendment made in the tariff item 8443 and 8471.

Said observations in para 10 read as under :

"Post 1st January,

2007, amendment was made to the tariff item 8443 and 8471 and the relevant changes are as under:-

Tariff Item	Description of goods
(HSN Code) 8443	Printing Machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof.
	<i>Other printers, copying machines and facsimile machines, whether or not combined</i>
8443 31 00	Machines which perform two or more functions of printing, copying of facsimile transmission, capable of connecting to an



	automatic data processing machine or to a network.
--	--

In Ricoh India Limited (Delhi)'s case (supra) 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.

29. As regards Legislation by Reference and Legislation by Incorporation, so far as entry 41A as contained in IIIrd schedule of DVAT Act and so far as heading 8471 under Chapter 84 of Central Excise Tariff are concerned, reference may be made to decision in **Jain Engineering Co. v. Collector of Customs, Bombay**, 1987 (32) E.L.T. 3(SC).

In Jain Engineering Co.'s case (supra), it was observed :

"24. In that case, the exemption Notification under the Customs Act, 1962, mentioned internal combustion piston engine as well as parts thereof in the description and it was linked to Tariff Heading 8406 of the Customs Tariff Act, 1975. It may be noted that the Tariff Heading 8406 did not cover parts of internal combustion engine, however, the description column in the exemption notification : included "parts" of the said engines. It was contended by the . Government in that case that parts are



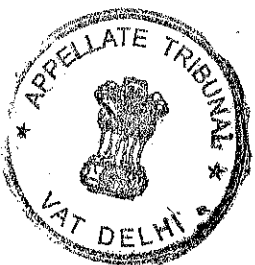
not covered under the notification even if it gets covered in the description column of the notification since the Tariff Heading 8406 does not cover "parts". It may be noted that the very same argument has been made by the Revenue in the instant case as well. In such a context, the Hon'ble Supreme Court held as follows:

"10. In view of our finding that the Notification exempts also parts of the engines mentioned in Paragraph 2 of Column (2) of the Table, in order to avail of the benefit of the exemption granted by the Notification, it has to be proved that the parts in respect of which the exemption is claimed, are parts of the internal combustion piston engine, as mentioned under Heading No. 84.06. Some of such parts may have been included under Heading No. 84.63. In other words, as soon as it is proved that the parts are of the engines, mentioned in Heading No. 84.06, such parts will get the benefit of exemption as provided by the Notification, irrespective of the fact that they or any or some of them have already been included under Heading No. 84.63 or under any other heading. Therefore, even if bushings are the same as bearings, still they would come within the purview of the Notification, provided they are parts of the engines mentioned under Heading No. 84.06. The contention of the Customs authorities that the article, which is provided under another Heading other than Heading No. 84.06, will not get the exemption as provided in the Notification, is not readily understandable. When the Notification grants



exemption to the parts of the engines, as mentioned under Heading No. 84.06, we find no reason to exclude any of such parts simply because it is included under another heading. The intention of the Notification is clear enough to provide that the parts of the engines, mentioned under Heading No. 84.06, will get the exemption under the Notification and in the absence of any provision to the contrary, we are unable to hold that the parts of the engines, which are included under a heading other than Heading No. 84.06, are excluded from the benefit of the Notification."

30. 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 the amendment made in Central Excise Tariff. But, no such amendment was

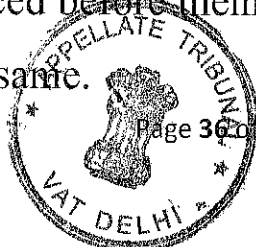


made in entry No.41A of IIIrd Schedule of DVAT Act. Therefore, amendment made in Central Excise Tariff w.e.f. 1/1/2007 has no impact on the notification or sl. 3 of Entry No. 41A, where in the last column Entry 8471 of Central Excise Act still finds mentioned.

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

31. It is significant to note that in this case, assessment was framed by learned Assessing Authority on the basis of sale figures collected from M/s Ingram Micro India Ltd., the seller. Notably, from the assessment orders it cannot be made out if the dealer had raised the point that the figures mentioned by the Assessing Authority included the data pertaining to ordinary printers as well, but the Assessing Authority did not take into consideration this fact. The dealer — assessee- appellant did not produce the entire relevant record in the proceedings before the Assessing Authority.

Even before the learned OHA, the dealer did not put forth this point that the figure available in the assessments of tax and interest also included ordinary printers. Had the dealer raised this point before the Assessing Authority or before learned OHA or produced before them any material, they would have considered the same.



26/5

26/5

As noticed above, dealer has submitted the affidavit on this point for the first time before this Appellate Tribunal. The statement ~~being~~ annexed to the affidavit is not supported by any invoice. Even after remand of the matter by the Hon'ble High Court, dealer – appellant has not produced on record any invoice or other documents in support of the above deposition contained in the copy of the affidavit. Therefore, the same does not come to the aid of the dealer – appellant.

Result

However, in the given situation, learned Assessing Authority to make fresh calculations and issue fresh notice of default assessment mentioning correct figures, after looking into the record already collected from M/s. Ingram Micro India Ltd. at the time of audit of that company, and confirming that all the items in the said record of that company were multifunction machines / devices and did not include any ordinary printer, as put forth by the dealer in the above mentioned affidavit.

The dealer – appellant to assist the learned Assessing Authority on the point of fresh calculations, as and when required by him.

Rate of taxes as regards carry cases of Laptop.

Vide assessment dated 24/ 26-7-2010, learned Assessing Authority found that it was a case of 2963 carry cases, subject to levy of tax @ 12.5% in view of determination No. 158.



26/5

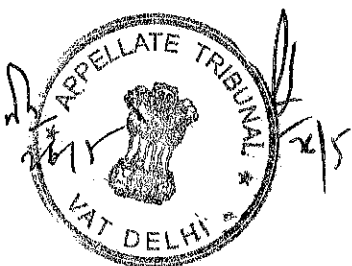
26/5

Learned OHA, while dealing with this objection was of the opinion that carry cases being not a packing material fall under the category of accessory, i.e. an unspecified item, which attract tax @ 12.5%.

Learned counsel for the dealer – appellant has submitted that in the matter of **M/s. Ingram Micro India Ltd. v. Commissioner of Trade & Taxes, Delhi**, Appeals No. 170-181/ATVAT/10-11, the carry cases were subjected to levy of tax only @ 5% and as such, dealer – appellant is liable to pay tax as regard the carry cases only @ 5%.

Here, in the course of arguments, learned counsel for the dealer – appellant has submitted that carry case is an accessory item and that even in M/s. Ingram Micro India Ltd.'s case (supra), this Appellate Tribunal held that carry case meant for laptop, fall under the definition of accessories and as such taxable as per schedule-III of DVAT Act.

33. In Ingram Micro India's case, this Appellate Tribunal came to the conclusion that carry cases of laptops are accessory covered by the IIIrd Schedule of DVAT Act and taxable accordingly.

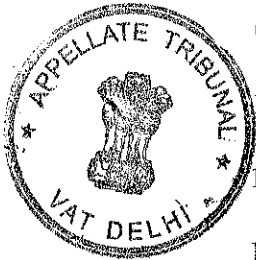


However, in para 40 it was observed that from the facts of that case it was clear that laptop's carry cases were not being sold as composite units; and further that it was the choice of the purchaser whether to buy carry case along with laptop or not.

34. Appellate Tribunal was of the considered view that the carry case being not container, the appeal was not entitled to the benefit of proviso of section 4. In this regard reference was made to the decision in **M/s Premier Breweries v. State of Kerala (1998) 1 STC 641**

In view of the decision in Ingram Micro India Ltd. case (supra) by this Appellate Tribunal, when laptop's carry case have been held to be covered by the definition of accessory, same are taxable as per IIIrd Schedule of DVAT.

35. It may be mentioned here that in the impugned order, learned OHA directed the Assessing Authority to examine the entire record and pass a fresh order as regards number of carry cases sold by the dealer. Learned OHA further observed that in case number of carry cases was found to be less than the number contained in the Assessment order, relief in this regard could be granted. These directions came to be issued



while observing that number of carry cases sold by the dealer was required to be ascertained from the record.

In the course of arguments, we have not been apprised of the status of proceedings before learned Assessing Authority as regards these directions. In case no further proceedings have been conducted ^{by} ~~as~~ learned Assessing Authority in this regard, learned Assessing Authority to do the needful in accordance with law in ascertaining the number of the carry cases sold, and to make calculations afresh in view of the decision in Ingram case (supra) decided on 20-08-2015.

Penalty

36. In this matter, Assessing Authority levied penalty under section 33 of DVAT Act. Learned OHA has upheld the levy of penalty by observing that no interference was required as regards levy of penalty.

Learned counsel for the dealer has referred to decision in **M/s Kranti Associates Pvt. Ltd. & Anr. V. Sh. Masood Ahmed Khan & Others**, SLP (Civil) No. 20428 of 2007, and submitted that when learned OHA has not given any reason to uphold the levy of penalty, the impugned order as regards penalty deserves to be set-aside.



37. A perusal of impugned order passed by learned Assessing Authority would reveal that while upholding the assessment of penalty, learned OHA simply observed that no interference was required even in respect of penalty.
38. In view of decision in M/s Kranti Associates Pvt.Ltd's case (supra), learned OHA was required to give reasons before upholding the levy of penalty.

Even otherwise in view of the above evidence presented before this Appellate Tribunal as regards the multi-function device/machine/printer, when the assessment passed by learned Assessing Authority and the impugned order passed by the learned OHA have been set aside, the Assessments of penalty also deserve to be set aside.

39. No other argument was advanced by learned counsel for the ^{parties} ~~Revenue~~.

Result

40. 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 ^{to} simply ~~to~~ make fresh calculations in view of the above findings, and looking into the record seized during audit of M/s. Ingram Micro India



26/5


26/5

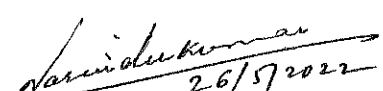
Ltd., including its invoices/ documents as regards the principle function of the multifunction machine / device sold by it to the dealer appellant herein, and accordingly to issue fresh notice of assessment on the basis of said fresh calculations. Assessing Authority may have assistance of the dealer – appellant for the purpose of said calculation. *dealer to render assistance as & when required.*

41. 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. 1227-1238/ATVAT/12 } 4516-4523
1239-1250/ATVAT/12 }

Dated: 31/5/22

Copy to:-

- | | |
|---|----------------|
| (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. | |

04/31/522
REGISTRAR

