

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

Appeal No.: 52/ATVAT/18
Date of Judgment: 25/5/2022

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

.....Appellant

V.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

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

Appeal Nos.: 1454-1465/ATVAT/18 ✓

Date of Judgment: 25/5/2022

M/s. Epson India Private Limited
101-104, 1st Floor,
Hemkunt Chambers,
No.89, Nehru Place,
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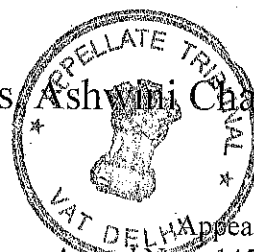
.....Appellant

V.

Commissioner of Trade & Taxes, Delhi.

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Counsel Representing the Appellant :Ms. Ashwini Chandrasekaran



Narinder Kumar
25/5/2022

[Signature]
25/5/2022

Counsel representing the Revenue : Sh. P. Tara

Appeal No.: 1652-1661/ATVAT/18

Date of Judgment. 25/5/2022

M/s. Epson India Private Limited
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Counsel representing the Revenue : Sh. M.L. Garg.

JUDGMENT

Appeal No.52/2018 (tax period Annual 2010-2011).

1. Appellant is a dealer in the business of computers and its peripherals including printers. It stands registered with department of Trade and Taxes vide TIN No. 07680236778.
2. The appellant is feeling aggrieved by order dated 22/12/17 passed by Ld. OHA while disposing of objections u/s 74 of DVAT Act.

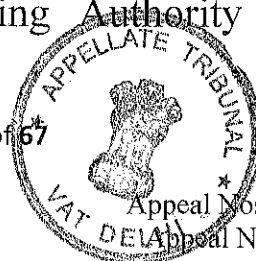


Ld. OHA, vide impugned order, directed the appellant to deposit tax and interest, in terms of the assessment made by the Assessing Authority on 14/03/15 as regards goods i.e "Multi Functional Printers/ Machines" (herein after referred to as MFP/M).

3. On 14/03/15, the Assessing Authority observed that the dealer- assessee was found to have sold different types of MFPs by charging VAT @ 5%, while these items are not covered by the items available in Schedule III of DVAT Act. He further observed that as per determination already made vide No. 158 dated 13/12/07, MFPs are taxable @ 12.5%, same being unclassified/ unspecified items.

It may be mentioned here that Assessing Authority, also imposed penalty on the dealer u/s. 33 read with Section 86(12) of DVAT Act.

4. While disposing of the objections, Ld. OHA also found that MFPs / machines are not covered by entry No. 41A Sl. 3 of Schedule-III of DVAT Act, 2004, and as such upheld the observations made by the Assessing Authority.
5. While framing default assessment of tax and interest u/s 32 of DVAT Act, learned Assessing Authority observed in the manner as :-



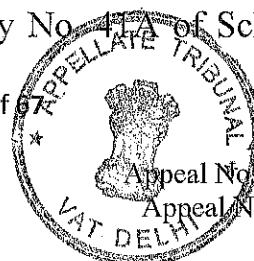
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"The dealer was issued notice u/s 59(2) for seeking additional information for the assessment year 2010-11. In response to the notice Shri Manoj Mittal, CA appeared on 02-03-2015 and produced Sales & purchases summary, DVAT-30/31. The information/documents furnished by the dealer were examined and it is observed that the dealer is in the business of trading of Computers and its peripherals including Printers. During the scrutiny of the documents submitted by the dealers, it comes to notice that in spite of an unclassified item, the dealer is not charging and depositing the tax on correct rate of tax i.e. 12.5% on the sale of Multifunction Printers. Therefore, the dealer has been asked to submit the details of sale of Multifunction Printers during the year 2010-11.

On making scrutiny of the documents submitted by the dealer along with list of monthly sale of Multi-function Printers relating to taxable Local VAT sale, it is observed that the dealer has sold different types of multifunctional printers by charging VAT@ 5% while these items are not covered under the list of items provided in the Schedule-III of the DVAT Act. Further, as per determination No. 158/CDVAT/2007/176 dated 13-12-07, multifunctional printers are taxable @12.5% being unclassified/unspecified items. Hence, these items are taxable @ 12.5% instead of 5%.

Although, in a matter bearing Writ Petition (c) 9805/2009 of Cannon India Pvt. Ltd. Vs Value Added Tax Officers & ors about the issue of taxation on multifunctional printers that whether this item covered under the entry No. 47A of Schedule III of DVAT



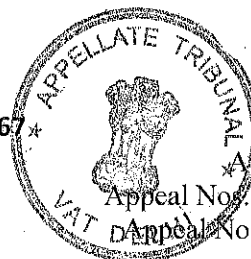
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Act, 2004, the Hon'ble High Court of Delhi vide its order dated 4th May 2012, while dismissing the petition of the petitioner M/s Cannon India Pvt. Ltd. directed the petitioner to take recourse to the statutory remedies and approach to the Department/Appellate Authorities. In this order, no specific directions were issued by the Hon'ble Court about the determination of tax on the multifunctional printer. As neither any Court nor VAT Tribunal has made any order for determination of taxes of these item, thus above referred determination of taxation of Multifunctional Printers on the tax rate of 12.5% being unclassified items still stands;

In its judgment dated the 04th May, 2012, Hon'ble High Court of Delhi has applied the doctrine of dominant of principal purpose and held that: "The principal of dominant purpose should be seen as to whether these machines can act as input of output units so as to qualify under entry 41A (Serial No. 3 of the Third Schedule)." The court has also clarified that in case the Multipurpose/Multi-Functional Printer/Devices Machine is a Duplicator of Photocopying machine which incidentally can be used as a printer or Scanner etc. the said machine would not qualify and cannot be treated and regarded as input or output units of automatic data processing machine. The said machines would not qualify under entry 41A and will be covered by the residuary tax rate. In this connection it is observed that;

1. A printer can only be used with the help of CPU while the Multipurpose/Multi-Functional Printer/Devices machine



can be used without the use of CPU for Copies, Fax and Phone facilities.

2. Generally the Multipurpose/ Multi-Functional Printer/ Devices has function namely Printer, scanner, Photocopier, Fax, Copier, E-mail/Phone. Only first function i.e. printing requires the computer systems and remaining are not principally ancillary to the computer system and don't require a computer system and can be used without attaching to it also.
3. The structure of the Multipurpose/Multi-Functional Printer/ Devices is approximately 40-75% higher than the price of printer of same configurations.
4. The term "peripherals" has been defined in Oxford Dictionary to mean as "(of a devices) able to be attached with a computer. However, the Multipurpose / Multi-computer. Hence, it cannot be categorised as "peripherals".

The facts explained above clearly established that every Multipurpose/ Multi-Functional Printer/ Devices having Photocopier Machine /Fax/Scanner/ Printing / E-mail/Phones facilities in it is not entirely depend upon the input from a computer. Besides, the dealer himself sold its products by the name of code, i.e. Multipurpose/Multi-Functional Printer/Devices/ Multifunction Machine. The dealer's Multipurpose/ Multi-Functional Printer/ Devices which were sold during the year 2010-11 are not input or output unit under entry 41 A (serial No. 3 of Third Schedule). Hence, the item are treated under general



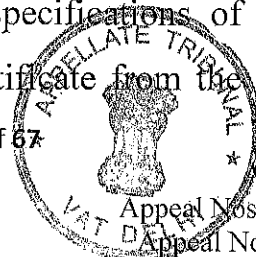
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category of residuary tax rate 12.5% being unclassified item taking into account the order of determination of tax made by the Commissioner Trade & Taxes vide order No. 158/CDVAT/2007/176 dated 13.12.2007 for Multipurpose/Multi-Functional Printers amounting to Rs. 12908752/- as taxable VAT Sale by charging less rate of tax of 5% in 2010-11, while it is to be taxed @ 12.5%. Month wise detail of sale under Value Added Tax Act is given in annexure 'A'. Hence, the dealer is liable to pay differential tax @ 7.5% along with interest @ 15% p.a. as per section 42 (2) of DVAT Act, 2004. Penalty u/s 33 read with section 86 (12) of DVAT Act, 2004 is also imposed on due additional tax liability."

6. Feeling dissatisfied with the above assessment, the dealer filed objections u/s 74 of DVAT Act on 25/5/2015. As noticed above, the objections came to be dismissed / rejected, vide order dated 22/12/2017.
7. During pendency of the objections, following directions were issued by the learned OHA to the dealer, for submission of information/ certificate/ documents -

"The matter pertains to 2010-11. A complete list of Multifunctional Printers produced and sold by the objector dealer which is subject matter of impugned assessment order will be submitted by the objector dealer along with complete commercial and technical specifications of each machine with photograph as well as a certificate from the competent technical



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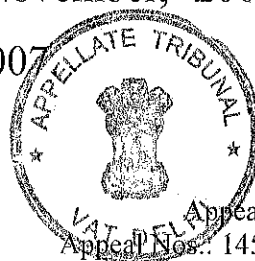
authority of the Company that it fulfils the definition and criteria as mentioned in Entry No. 3 of Serial No. 41 A of 3rd Schedule, on which the objector dealer is relying upon. It is also required as per the directions given by Delhi High Court in para 21 of order in the matter of M/s Ricoh India Ltd. vs. CVAT dated 04.05.2012 in STA No. 06/2010."

Appeal Nos.: 1454-65/ATVAT/18

8. These 12 appeals have been filed by the dealer, feeling aggrieved by order dated 25/10/2012 passed by learned Objection Hearing Authority (OHA). Vide impugned order learned OHA, rejected the objections having regard to the determination order No. 158/CDVAT/2007/176 dated 13/12/2007 already passed by learned Commissioner, and thereby upheld default assessment of tax and interest, and levy of penalty by the Assessing Authority.

9. The objections were filed before learned OHA, challenging assessment of tax and interest framed u/s 32 and assessment of penalty framed u/s 33 of Delhi Value Added Tax, 2004 (hereinafter referred to as the DVAT Act), vide order dated 13/4/2010.

Assessments on tax and interest u/s 32 were framed for the tax period from September, 2006 November, 2006, December, 2006, February, 2007 & March, 2007



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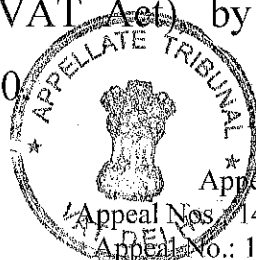
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Assessment of penalty u/s 33 was framed for June, 2006, September, 2006, November, 2006, December, 2006, January, 2007, February, 2007 and March, 2007).

10. The assessments of tax and interest were made in respect of multi-functional printers and sales of spares, by observing that the same do not find mention in any of the schedules to DVAT Act, and same attracted VAT @ 12.5%, in view of determination order dated 13/12/2007, referred to above.
11. Assessment of penalty was made while observing that it was a case of tax deficiency, u/s 86(12) of DVAT Act, as the dealer had made sale of multi-purpose/ function printers charged tax @ 4% instead of 12.5%.

Appeal No.: 1652-1661/ATVAT/18

12. These 10 appeals have been filed by the dealer, feeling aggrieved by order dated 22/12/2011 passed by learned Objection Hearing Authority (OHA).
13. The objections were filed before learned OHA, challenging assessment of tax and interest framed u/s 32 and assessment of penalty framed u/s 33 of Delhi Value Added Tax, 2004 (hereinafter referred to as the DVAT Act) by the Assessing Authority vide order dated 8/4/2010.



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14. Assessments on tax and interest u/s 32 were framed by the Assessing Authority for the tax period from May, 2006, June, 2006, July, 2006, August, 2006, October, 2006 and January, 2007.

Assessment of penalty u/s 33 was framed for May, 2006, July, 2006, August, 2006 and October, 2006.

15. The assessments of tax and interest were made in respect of multi-functional printer and sales of spares, by observing that the same do not find mention in any of the schedules to DVAT Act, and same attracted VAT @ 12.5%, in view of determination order dated 13/12/2007, referred to above.

Assessment of penalty was made while observing that it was a case of tax deficiency, u/s 86(12) of DVAT Act, as the dealer had made sale of multi-purpose/ function printers charged tax @ 4% instead of 12.5%.

16. Since the objections came to be dismissed, the dealer has come up in appeals.

17. Here, as regards appeal No. 52/2018, learned OHA determined the question before him by observing in the manner as :-



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"The question which needs to be answered is whether the Multifunctional Printers/Devices sold by the assessee/ objector dealer in the year 2010-11 as "Epson Stylus" of eight different configurations/ models are to be classified under Third Schedule, Entry No. 41A (Sl. No. 3) taxable @5% (as is being claimed by the objector dealer) or to be treated as unclassified/ unspecified goods taxable @12.5% in accordance with Section 4(1)(e) of DVAT Act-2004 (as is held by the Assessing Authority)?"

The objections came to be dismissed by learned OHA vide impugned order, operative part of which reads as under :-

"In view of the above mentioned facts, circumstances as well as considering the relevant provisions of the law, I am of the considered view that the Multifunctional Printers/ Machines sold by assessee/objector dealer during the year FY 2010-11 is not covered under Entry No. 41A (Sl. No. 3) of Third Schedule of DVAT Act-2004 and therefore to be treated as unclassified/ unspecified goods to be taxed at residuary rate of tax i.e. 12.5% in accordance with the provisions of Section 4(1)(e) of DVAT Act-2004. Therefore, the impugned Assessment Order of tax & interest issued under section 32 of DVAT Act, 2004 on dated 14.03.2015 by the Assessing Authority is hereby upheld and the corresponding objection is dismissed/ rejected."

18. As regards appeal No. 1454-1465/2006, vide impugned order learned OHA, rejected the objections due to the following reasons :-



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"The Principal of dominant purpose should be seen as to whether these machines can act as input or output units so as to qualify under entry 41A (serial no 3 of the third Schedule). The court has also clarified that in case the Multi-function machine is a duplicator or a photocopying machine which incidentally can be used as printer or scanner etc. The said machine would not qualify and cannot be treated and regarded as input or output unit out automatic data processing machine. The said machine would not qualify under entry 41A and will be covered by the residuary tax rate."

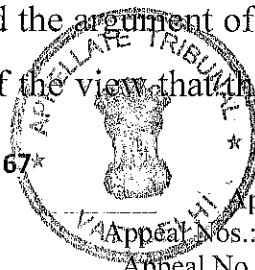
"As recorded in the case of Ricoh India Ltd. the issue in question first requires determination of factual aspects viz. Whether or not the multi functional machine in question, is in fact, input or output unit of an automatic data processing machine. For deciding this fact, we have to look at the dominant/principal purpose for which the machine was designed and manufactured. Depending upon the said factual finding, it has to be determined and decided whether or not the said machine would fall under entry No. 41A or should be treated as falling in other or general category."

Taking into account the facts and circumstances of the forgoing discussion, the written submissions made and the contentions put forth by the Ld. VATP. I am of the view a Multipurpose/ Multifunctional printers (also known as copier or copy machine) is a machine that makes paper copies of documents and other visual images quickly and cheaply. Most current Multipurpose/ Multifunctional printers use a technology called xerography, a dry



process using heat. There is an increasing trend for new photocopiers to adopt digital technology, thus replacing the older analogue technology. With digital copying, the copier effectively consists of an integrated scanner and laser printer. This design has several advantages, such as automatic image quality enhancement and the ability to "build jobs" (that is, to scan page images independently of the process of printing them). Some digital copiers can function as high-speed scanners; such mode is typically offer the ability to send documents via email or to make them available on file servers. But finally it is work as a photocopier machine mainly and at the time of printing of pages does not receive any data as output or input device. In modern photocopier also this technology is used. So it is very clear that during function the machine does not need connection from other source to receive data (Like Computer). The paper to be photocopied are to be placed and the machine with its latest technology scan and make copies. So it is very much clear that in the instant case the multifunctional printers sold by the dealer is not covered under entry 41A and is they taxable as per the determination orders of the CTT held vide order No. 158/CD/VAT/2007/176 dt. 13/12/2007.

From perusal of documents available on record. I have gone through the objections filed in DVAT-38 forms, notices of default assessment of tax, interest and penalty, the documents furnished by objector in support of his contention and the relevant provision of the Act and have also heard the argument of the counsels of the objection, whereupon. I am of the view that the notices of default



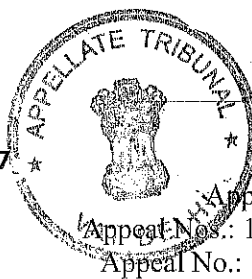
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assessment of tax and interest and assessment of penalty issued (passed by VATO KDU) are legally valid, therefore, the same are upheld. Accordingly, the objections filed by M/s Epson India Pvt. Ltd. are rejected. Further the recovery proceedings be started. The objections are disposed of accordingly.”

19. As regards appeal No. 1652-1661/2011, vide impugned order learned OHA, having regard to the determination order No. 158/CDVAT/2007/176 dated 13/12/2007 already passed by learned Commissioner, the facts and circumstances, disallowed the objections, by observing in the manner as :-

“In view of above cited facts and circumstances and in the light of citation given by the learned Commissioner, Trade & Taxes, Delhi wherein it has been held that VAT is payable @ 12.5% on the sale of multi-functional printers / copiers/ scanners & sale of spares & consumable thereof. An appeal has also filed before the Hon’ble Tribunal against the said order of the learned Commissioner which is pending for disposal. Considering all these facts, I am of the consider opinion that the department has rightly disallowed the claim. Therefore, all the objections mentioned above are disallowed. However, I am of the consider view that the same matter is filed before the Hon’ble High Court of Delhi, VATO concerned is hereby directed whatever order passed by the Hon’ble Court be Honoured accordingly.”



Appeal No. 52/2018

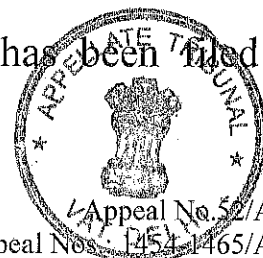
20. At page 86 of appeal No. 52/18, dealer-appellant has filed a brochure Ex-2 in respect of Epson Stylus Office TX600FW and at page 90 has been placed another brochure in respect of Epson Office TX 510FN. In the course of arguments, Ld. Counsel of the dealer-appellant submitted that both these brochures were also submitted by the dealer before the Ld. OHA during hearing on objections.

As per first brochure, i.e. in respect of Epson Stylus Office TX 600FW, it has four functions, i.e. print, copy, scan and fax. Ld. Counsel for the dealer-appellant has pointed out that input data buffer speed of the said product is 64 KB.

While referring to the brochure of the other product (Epson Office TX 510N), Ld. Counsel for the dealer-appellant submitted that this product has input data buffer speed of 132 KB bytes.

On the basis of above two brochures, Ld. Counsel for the dealer submitted that these two products are multifunction printer.

It is pertinent to mention here that no document of any other product depicting their specifications has been filed by the dealer-appellant.



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Ld. Counsel for the Revenue has submitted that the dealer-appellant has also not placed on record invoices of the relevant period in respect of the above said two products or any of the other six products which find mentioned in Para 10 of the impugned order of Ld. OHA.

In the impugned order, Ld. OHA observed that the dealer-appellant did not submit any certificate/report of competent technical authority. No such certificate/report has been filed by the dealer-appellant here too.

As per the impugned order, in respect of the above directions, dealer submitted a list of 8 models of multifunctional printers, said to have been sold during the year 2010-11 and further submitted that the said models stood discontinued.

Some photographs with specifications of multifunctional printers were also submitted to the learned OHA.

Learned OHA observed that the said photographs revealed that the said machines are meant for various functions including printing, copying, scanning, photo printing and fax, etc., but no certificate/ report of competent technical authority was furnished during the proceedings on objections.



Appeal No. 1454-1465/2006

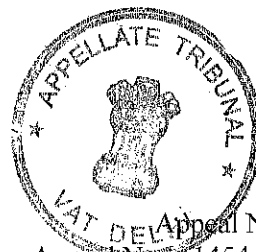
21. As regards material produced by the dealer, as per copy of bill of entry issued by India Custom EDI System – Imports (ICES/I), Mumbai, which pertained to invoice dated 12/12/2006, multifunctional printers were imported.

Appeal No. 1652-1661/2011

- 22.* As regards material produced by the dealer, as per copy of bill of entry issued by India Custom EDI System – Imports (ICES/I), Mumbai, which pertained to invoice dated 12/12/2006, multifunctional printers were imported.

Therefore, the court is to take into consideration only the material made available, to consider the respective contentions raised on behalf of the parties.

- 22.* Learned counsel for the dealers – appellants has contended that entry No. 41A of schedule-III is the relevant entry, sl. no. 3 of which is attracted to the present matters, for the purposes of classification of the products of the dealers as multifunctional printer (MFP).



Learned counsel for the dealer – appellant has submitted that her argument is based on doctrine of dominant or principal purpose which finds mentioned in the decision of **Ricoh India Ltd. v. Commissioner**, 2012 SCC Online Del 2579.

Another contention raised by learned counsel for the dealer – appellant is that even if it is assumed that the products of the dealer – appellant is a multinational device and not a multinational printer, as per case of the Revenue, it is to be considered as to whether the multinational device is an input or output unit under entry 41 A of DVAT Act and for said consideration, doctrine of dominant or principal purpose is to be kept in mind, as observed in **Ricoh India Ltd.** case (supra). Learned counsel has urged that the device of the dealer – appellant being input / output unit falls under entry 41A of DVAT Act and as such exigible to tax only @ 5% and not covered by the residuary entry, so as to say that the same are exigible to tax @ 12.5%.

Arguments advanced by learned counsel for Revenue.

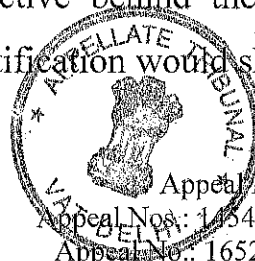
23. Learned counsel for the Revenue has submitted that on 13/12/2007 a determination order was passed by the Commissioner, VAT in the case of Ricoh India Ltd. and as per said order, such products were exigible to tax @ 12.5%.



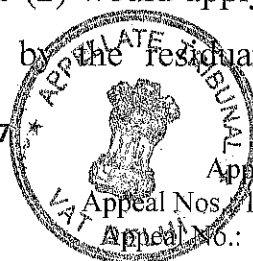
It has been submitted^{that} the determination order was not challenged by the dealer-appellant and as such same is binding even on the dealer – appellant.

While referring to the decision in Ricoh India Ltd.'s case (supra) by our own Hon'ble High Court, learned counsel for Revenue has drawn attention to the observations made by the Hon'ble High Court in para 13,14,19 & 20 which read as under :-

“At first, we deem it appropriate to examine the four notes in the VAT Act. Note (1) stipulates that Rules for 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 will apply for interpretation. Note (2) states that where commodities described in any heading or sub- heading in the specified entries in the VAT Act are different from the corresponding description in the Central Excise Tariff Act, 1985, then the commodities described in the entry in the VAT Act would be covered by the scope of the notification (i.e, the notification in question issued under the VAT Act) and the commodity covered by corresponding description in the Central Excise Tariff Act, 1985 shall not cover the scope of the notification. Note (2) is rather ambiguous and is capable of different interpretations. In these circumstances, it is important to understand the purport and objective behind the said note. A glance at the entries of the said notification would show that under



column (2) commodities by description have been stated and under column (3) reference is made to the Central Excise Tariff Heading. Note (2) seeks to clarify and state that in case the entry or description in column (2) matches with the description of the entry in Central Excise Tariff Act, 1985, then the entry in the VAT Act should be given the same meaning to cover/include the goods specified in the corresponding entry in the Central Excise Tariff Act, 1985. However, in case the description of the goods in column (2) of the entry is different from the corresponding description of the goods in the Central Excise Tariff Act, 1985, reference to the entry in the Central Excise Tariff Act, 1985 should not be made. This becomes clear when we read Note (3). The said note stipulates that when description of any heading or sub-heading in the Act matches with the corresponding description in the Central Excise Tariff Act, 1985, then, all commodities covered for the purpose of the said tariff under the Central Excise Tariff Act, 1985, would be covered under the scope of the notification. Note (3) also clarifies that the term "notification" is not with reference to the four notes, but the notification issued under the VAT Act. The reason is obvious that any good not covered by the notification would fall outside the scope of schedule III and would not be taxable @ 4-5%, but @ 12.5%. The aforesaid interpretation, gains strength and merits acceptance when we refer and interpret Note (4). Note (4) states that if the commodity or good falls under the heading or sub-heading "other" in the Central Excise Tariff Act, 1985, then interpretation stipulated in Note (2) would apply. In other words, the goods would be covered by the residuary provision and



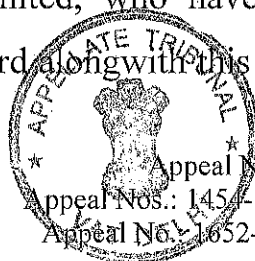
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taxable accordingly. The word "heading" in Note (4) is superfluous as the word "other" never appears in the heading, but can be a sub-heading under the Central Excise Tariff Act, 1985.

14. Thus, Rule (1) is a general rule of interpretation and is not subject to Rules (2) to (4). Rules (2) to (4) require that we should examine the description in column (2) and compare it with the description of the goods mentioned in the relevant entry in the Central Excise Tariff Act, 1985. If the same are identical, then we should apply the same interpretation, as has been given to the entry in Central Excise Tariff Act, 1985. If the entries are not identical or the commodity falls under the heading "other" in the Central Excise Tariff Act, 1985, then we have to look at the second column of the schedule to find out whether the commodities are covered by the said column. In case commodities/goods are not covered by the description given in the column, then commodities/goods will fall under the residuary tax rate.

Rate of duty is prescribed against each sub-heading. Thereafter, sub-headings read, printer, line printer, dot matrix printer, letter quality daisy wheel printer, graphic printer, plotter, laser jet printer, inkjet jet printer and others. "Others" fall under the sub-heading 8471.60.29. The multi functional machines/printers will not fall under any of the specific sub-heading, but would fall under the residual sub-heading 8471.60.29 i.e. "others". This is also clear when we examine the bills of entry, which have been filed by Canon India Private Limited, who have filed a writ petition before us and has been heard along with this appeal. In the



said bills of entry, machines have been cleared under tariff entry 8471.60.29 i.e. "others".

20. As noticed above, Note (4) to the notification with reference to Entry 41A specifically states that it would not apply in case the goods fall under the sub-heading "others" in the Central Excise Tariff Act, 1985. In view of the aforesaid, we need not go into and examine the issue of amendment made in Entry No.8471.60 with effect from 1st January, 2007, whereby multi functional machines have been specifically classified under the tariff head 8443 and are no longer classified under the head 8471.60. Whether or not the reference in the notification issued under the VAT Act is "Legislation by Reference" or "Legislation by Incorporation" is not relevant and need not to be decided. We record that the multi functional machines/printers do not find mention in any specific entry or description in 8471.60. They would fall under the head "others" as combined output and input units. Similarly, under column (2) in the heading "description" in Entry 41A of the notification issued under the VAT Act, they can/may fall under the general description as input or output unit.

This caution is necessary in view of the Notes (2) to (4) of the notification, which have been interpreted above. Thus, with regard to the period after 30th November, 2005, the question of law mentioned above is answered holding, inter alia, that the doctrine of dominant purpose of the multi functional machine will determine/decide whether it is an input or output unit of an automatic data processing machine. In case the principal or dominant purpose is to act as input or output unit, then it would

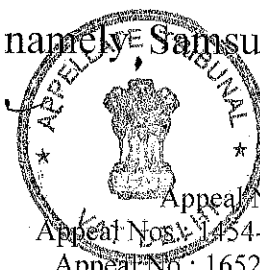


qualify and will be covered by Entry 41A at Sr. No.3. However, in case multi functional machine is a duplicator or a photocopying machine, which incidentally can be used as a printer or a scanner etc., the said machine would not qualify and cannot be treated and regarded as input or output unit of automatic data processing machine. Said machines would not qualify under Entry 41A and will be covered by the residuary tax rate. Question referred to above is accordingly answered.”

24. Learned counsel for the Revenue has submitted that because of the amendment made in entry No. 8471.60 w.e.f. 1/1/2007, multifunctional machines were specifically classified under the tariff head 8443, and are no longer classified under the head 8471.60, as observed by the Hon'ble High Court in Ricoh India Ltd.'s case (supra).

On the other hand, the contention of counsel for the appellant is that even after the said amendment w.e.f. 1/1/2007, multifunctional machines still continue to be classified under entry 8471 of Central Excise Tariff and Entry No. 41A (sl. 3) of Schedule-III of DVAT Act.

25. One of the submissions made by learned counsel for Revenue is that as per copy of invoice submitted by the Revenue with the paper book, another company, namely Samsung has been



charging tax @ 12.5% on the same products and that this fact be also taken into consideration while deciding this matter.

Learned counsel for the Revenue has urged that there is no merit in the contention raised on behalf of the dealer that the relevant entry applicable to their case is sl. No. 3 of entry No. 41A of DVAT Act.

Arguments advanced on behalf of Appellant in reply

26. Learned counsel for the dealer – appellant has referred to the items which find mentioned in column – 2 of entry – 41A (sl. No. 3) and submitted that the two products, namely, STYLUS Office TX600F (Discontinued Model), Epson Office TX 510FN being multifunction printers, same are classifiable under the aforesaid entry-41A and that learned OHA has wrongly held that these products are ^{eligible} eligible to tax @ 12.5%.

In support of her submission, learned counsel referred to the following words available in column No. 2 of the said entry:-

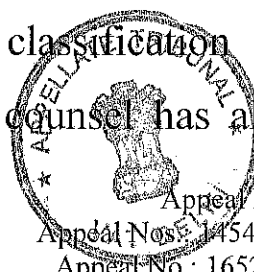
“Other Digital automatic data processing machines comprising in the same housing at least a central processing unit and an input and output unit whether or not combined.”



Then, learned counsel for the dealer – appellant submitted that in view of the said entry from the use of words, input units, output units, it can safely be said that a product which in itself is only an input unit or an output unit, same also falls in entry-41A (sl. No. 3).

As to what is an input unit or output unit, learned counsel for the dealer – appellant has referred to para C.11 and C.12 of the memorandum of appeal wherein their dictionary meaning has been reproduced, in order to support her aforesaid contention that each of the said two products in itself being input/ output unit is covered by entry-41A.

While referring to the observations made by the Hon'ble High Court in Ricoh India Ltd.'s case (supra), as to whether a multifunctional printer / machine is an input or output unit doctrine of dominant or principal purpose is to be established, Learned counsel for the dealer – appellant has submitted that the dominant or principal function of the two products referred to above is printing. Learned counsel has referred to decision in **M/s Xerox India Ltd.** 2010 (260) ELT 161 (SC), decided by Hon'ble Apex Court, in support of her submission that doctrine of dominant or principal purpose is to be taken into consideration for the purpose of classification of such like products. In this regard, learned counsel has also relied on



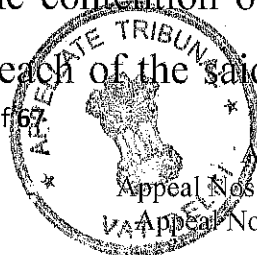
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decision in M/s. Canon India (P) Ltd. v. State of Tamil Nadu, 2015(2) TMI 751.

27. On the other hand, learned counsel for Revenue has contended that decision in M/s. Xerox case (supra) pertained to levy of custom duty and not to VAT Tax, and further that Hon'ble Apex Court did not classify the subject product there, as multifunctional printer, and further more in para 15 of the said decision, Hon'ble Apex Court observed that the said product (8471) could be clearly classified as following under sub-heading 8471.60 of the Act.

As regards, the doctrine of dominant or principal function, learned counsel for the Revenue has contended that a printer generally costs Rs. 5,000/- and keeping in view the entire cost of each of the two products referred to above, compared with their other three functions, i.e. scan, fax and copy, none of the said two products can be termed to the 'multifunctional printer' and it can also not be said that 80% of the cost of the said products is towards printer. Learned counsel for the Revenue has further submitted that even 10% of a multifunctional machine can be of much significance from the point of its user, keeping in view the other functions, i.e. scan, fax or copier, and as such there is no merit in the contention of learned counsel for the dealer – appellant that each of the said product is to be



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termed as multifunctional printer, and not multifunction machine.

In support of his contention, learned counsel for the Revenue has referred to the decision in Ricoh India Ltd.'s case (supra), where the Hon'ble High Court observed that the product was multifunctional printer/ machine and not only ~~as~~ a multifunctional printer.

It may be mentioned here that in the list of multifunction printers said to have been sold in the year 2010-11^(Appeal No. 52/18), submitted by the dealer to the learned OHA, 08 models were specified. Same find mentioned in para 10 of the impugned order. In the course arguments before this Appellate Tribunal, this fact has not been disputed on behalf of the appellant.

Discussion

28. Entry No. 41A, Sl. No. 3 of schedule-III of the Act reads as under :-

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



Sl. No.	Description	Central Excise Tariff Heading
(1)	(2)	(3)
3.	<p>30/11/2005 to 9/5/2016</p> <p>Automatic data processing machines and units thereof, magnetic or optical readers, machines for transcribing data into data media in coded form and machines for processing such data.</p> <p>Analogue or hybrid automatic data processing machine, Electronic Diaries, Portable digital automatic data processing machine, personal computer, computer systems including personal computers, other Digital automatic data processing machines comprising in the same housing at least a central processing unit and an input and output unit whether or not combined, micro computer/processor, large/ mainframe computer, computer presented in form of systems, digital processing units, storage units, input units, output units. Teletypewriter, Data entry terminal, Line printer, Dot matrix printer, Letter quality daisy wheel printer, Graphic printer, Plotter, Laser jet printer</p>	8471



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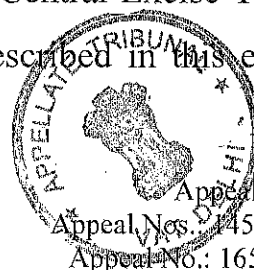
	Key board, Monitor, storage units, floppy disc drive.	
	Winchester /hard disc drives, Removal/exchangeable disc drives, magnetic tape drives, Cartridge tape drive, other units of automatic data processing machines, Uninterrupted power supply units (UPS)	

It may be mentioned here that the above information is as per the description in column (2) above, 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).

Following are the four notes appended to the above said table/notification :

“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



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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.

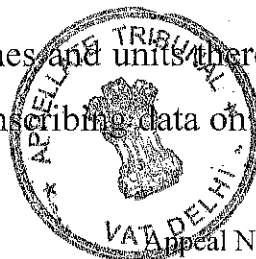
Note.-(3) Subject to Note (2), for the purposes of any entry contained in this notification, where the description against any heading or, as the case may be, sub-heading, matches fully with the corresponding description in the Central Excise Tariff, then all the commodities covered for the purpose of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

As observed in **Ricoh India Limited's case (supra)**, Central Excise Tariff Headings had undergone one relevant amendment during the relevant period. In order to appreciate the controversy, reference was made and relevant extract of the relevant changes, Section notes and Chapter notes were taken note of and reproduced.

Prior to 1st January, 2007, entry 8471 of Central Excise Tariff contained the following heading :

"Automatic data processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media



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in coded form and machines for processing such data, not elsewhere specified or included.”

Hon’ble High Court reproduced the following extract of sub-headings and items which find mentioned in entry 8471:

“8471 10 00	Analogue or hybrid automatic data processing machines.	u 16%
8471 60	Input or output units, whether or not containing storage units in the same housing.	u 16%
8471 60 10	Combined input or output units	
	Printer	u 16%
8471 60 21	Line printer	u 16%
8471 60 22	Dot matrix printer	u 16%
8471 60 23	Letter quality daisy wheel printer	u 16%
8471 60 24	Graphic printer	u 16%
8471 60 25	Plotter	u 16%
8471 60 26	Laser jet printer	u 16%
8471 60 27	Ink jet printer	u 16%
8471 60 29	Other	u 16%”

Therein, our own Hon’ble High Court, while dealing with the question as to whether multifunction machines are printers or computers peripherals or not, observed in the manner as:

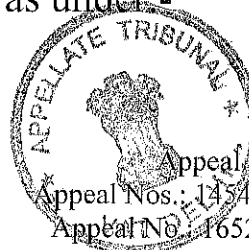
“A multifunctional machine can be a computer peripheral, if its principal or sole purpose is to be attached and function as a computer ancillary. A multi functional machine will be and qualify as a computer peripheral when its main/predominant

purpose is to scan documents, load data or work as an input device of the computer or work as an output device to take printouts etc. the computer At the same, there can be photocopiers, whose main purpose is to copy or act as a duplicating machine to make copies of documents. Incidentally they may also be used as a printer. This would require elucidation and examination of factual matrix in each case and the machine in question on case to case basis.”

29. In **M/s Canon India (P) Ltd. v. State of Tamil Nadu**, (2015) (2) TMI 751, the question of law before the Hon’ble High Court was:

“Whether the multifunctional network printers sold by the Appellant under the Canon Product were multifunctional network printers.”

In the said decision, Hon’ble High Court relied on decision of **Xeros India Ltd. Vs Commissioner of Customs, Mumbai** 2010(260) ELT 161 (Supreme Court), to deal with the contention raised on behalf of the assessee that when the predominant function of image runner was printing documents, alongwith add on features like scan, copier, etc. and the machine acts as an input and output device, the said product fell under schedule 1, Part-B, entry 18 (i) of Tamil Nadu GST Act. The relevant entry 18 (1) reads as under:-

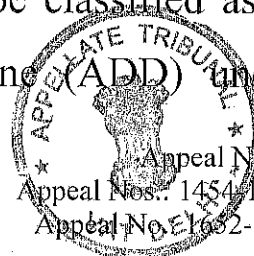


“Computers, personal, mini, mainframes and laptops of analogue and digital varieties including automatic teller machines, their hardware and peripherals like modern and speakers, key board, monitor, mouse, CPU, floppies of all sizes cartridge tape drives, CD ROM drives, DAT drives, hard disks, printers like dot matrix, ink jet and laser, line, line-matrix, scanners, multimedia kits, plotters, computer consumables including DAT tapes, print ribbons, printer cartridges and cartridge tapes and computer cleaning kits.”

In Xerox India Ltd. case (supra), the claim of the assessee was that the import of multifunctional machines capable of discharging number of functions would fall under sub-heading 8471.60 of the Act, whereas the Department of Customs classified the said imported machines under chapter heading 8479 (residuary heading).

The importer was unsuccessful before the Original Authority, First Appellate Authority and before the Tribunal. That is how, the importer knocked at the door of the highest court.

In Xerox India Ltd. case (supra), the claim of the assessee was with regard to classification of Xerox Regal 5799, Xerox Work Centre DX100 and Xerox Work Centre XD155df which, according to the appellants, were Multi-functional Machines performing the functions of printers, fax machine, copier and/or scanner and therefore, required to be classified as Printers in Automatic Inter Processing Machine (ADD) under chapter



heading 8471.60 and the view of the authorities under the Act and the Tribunal was that the aforesaid machines were required to be classified under Chapter Heading 8479.89 (Residual Heading).

Hon'ble Supreme Court held that the aforesaid products imported, namely multifunctional machines served as input and output device of ADPM(Computer) and, therefore, classifiable under heading 8471.60 of the Act.

Therein, it was not in dispute that multi-functional machines in question, Xerox Regal 5799 had about 85% of its total parts and components alongwith manufacturing cost allocated to printing as does 74% of the Xerox XD155df model.

Hon'ble Apex Court observed that the printing function emerges as the principal function and gives the multi-functional machines its essential character. Hon'ble Apex Court accepted the contention of the appellants that based on the nature of the functions they perform, the multifunction machines served as input and output devices of an ADPM (Computer) and thus served as unit of a ADPM, and as a result were classified as falling under heading 84.71.60 of the Act.

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



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30. 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 and same reads as:

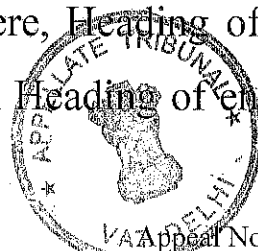
“Automatic data processing machines and units thereof, magnetic or optical readers, machines for transcribing data into data media in coded form and machines for processing such data.”

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.

31. 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.

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



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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;”

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

32. As per claim of the dealer, its product, even though having four functions-Print, Scan, Copy, and fax-

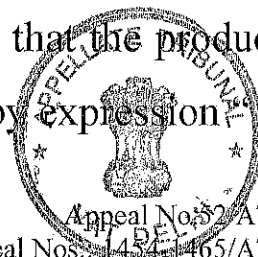
(i) Same is covered by item ‘ Automatic data processing machine’ or

expression “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”

(ii) Same is a machine having input and output units;

(iii) Same is a laser jet printer, dominant function of this multifunction machine being printing, out of the total four functions.

33. It was argued on behalf of the appellant, that the product is an ADPM; that the product is also covered by expression “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 units namely, storage units, input units, output units.”

Claim of the Revenue

34. 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.

35. 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 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.

36. As pointed out by ^{Dr.} counsel for the Revenue, another aspect raised before the Hon'ble High Court, in Ricoh India's case, was as to whether and to what extent the HSN Code was applicable as far as entry No. 41 A of 3rd Schedule of DVAT Act is concerned.

In this regard, Learned Counsel for the Revenue has referred to Note 5 (A) of Chapter 84 of Central Excise Act and contended that the MF Device/Machine does not fall within the expression 'automatic data processing machine', as there is nothing on



record to suggest that the same fulfills all the ingredients specified therein.

Learned Counsel for the Revenue submitted that here, Learned Counsel for the dealer-appellant in the course of arguments, did not refer to any brochure or document or invoice to elaborate the contention that product(s) of the dealer was ADPM.

In Xerox's case of 2010 (supra), 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.

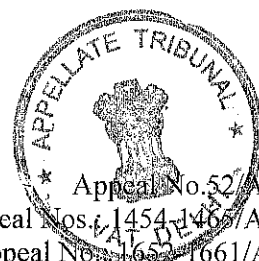
As per Chapter Note 5(B)(a), a unit must be of a kind solely or principally used in an automatic data processing system. It is not case of the appellant there that its multifunctional machine is "used **in** an ADP system". The case is that the multifunctional machine is "used **with** an ADP system".

A unit in itself cannot be termed as ADPM, the reason being that a complete digital data processing system comprises of atleast a CPU, an input unit and an output unit. In other words, a CPU, an input unit and an output unit separately housed and interconnected, form a system.

Here, it is not case of the appellant that its subject product or any of its models has a CPU. Therefore, there is no merit in the contention on behalf of the dealer that the Multifunction machine or device falls either in item "8471 10 00 or sub heading 8471 30" of entry 8471 of Central Excise Tariff. *Therefore,*

an We do not find any material on record to suggest that Multifunction machine or device 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.”

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.

37. In view of what has been said above, we find that the product of the dealer does not fall in tariff item 8471 10 00 or sub-heading 8471 30 or 8471 41 or in any of the tariff items falling in between or in any of the tariff items upto 8471 49 00 falling under each of said two sub headings of Central Excise Tariff .

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

38. 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,

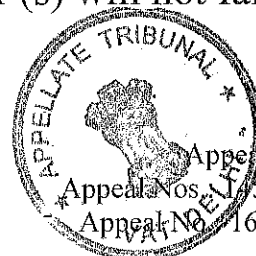
output units.”

Sub-heading 8471 60 reads as under:

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

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.

As further submitted, Hon'ble High Court held that Multifunction machine (s) / Printer (s) will not fall under any of



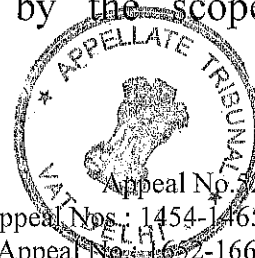
the sub heading, but fall under the residual - 8471.60.29 i.e. "others".

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"

We find that product of the appellant is combination of more than two constituent units, i.e. input, namely, scanner, fax and output units, namely printer.

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.



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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 multifunction, 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.

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.

39. As noticed above, the product of the appellant being constituent of input and output units, it is covered by sub-heading 8471 60 and tariff item 8471 60 10 of Central Excise Tariff.

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
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 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.

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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.

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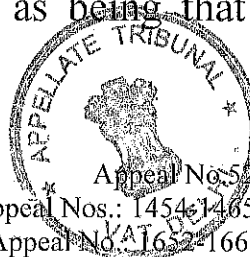
Copier

40. 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 multiple function device has any predominant or principal function? If so, its effect?

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

On behalf of the appellant, reference was made to note (3), Section XVI of Central Excise Act, to point out that unless the context otherwise requires, composite machines consisting of two or more machines fitted together to form a whole and other machines designed for the purpose of performing two or more complementary or alternative functions are to be classified as if consisting only of that component or as being that machine which performs the principal function.

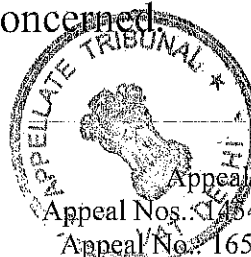


In this regard reference was also made to note (7), Chapter 84 of Central Excise Act which provides that a machine which is used for more than one purpose is, for the purposes of classification, to be treated as if its principal purpose were its sole purpose.

As per this brochure, typical output of the product of the dealer, by function reads as under :

Feature	Percentage of overall output
Print	67
Copy	30
Fax	3
8.5 x 11	90
8.5 x 14	6
11 x 17	4
Duplex	Less than 2

Attention has also been drawn to the chart, whose source is stated to be Communication Supplies Consulting Service, to point out that there has been increase in use of the printed pages, in comparison to the copied pages functionality usages pattern in today's organizations is concerned.



As noticed above, at page 86 of appeal No. 52/18, dealer-appellant has filed a brochure Ex-2 in respect of Epson Stylus Office TX600FW and at page 90 has been placed another brochure in respect of Epson Office TX 510FN. In the course of arguments, Ld. Counsel of the dealer-appellant submitted that both these brochures were also submitted by the dealer before the Ld. OHA during hearing on objections.

No document of any other product depicting their specifications has been filed by the dealer-appellant *in Appeal 52/18.*

As per first brochure, i.e. in respect of Epson Stylus Office TX 600FW, it has four functions, i.e. print, copy, scan and fax.

In the impugned order, Ld. OHA observed that the dealer-appellant did not submit any certificate/report of competent technical authority. No such certificate/report has been filed by the dealer-appellant here too.

As noticed above, as per the impugned order, in respect of the above directions, dealer submitted a list of 8 models of multifunctional printers, said to have been sold during the year 2010-11 and further submitted that the said models stood discontinued. Some photographs with specifications of multifunctional printers were also submitted to the learned

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OHA, which as observed by learned OHA revealed that the said machines are meant for various functions including printing, copying, scanning, photo printing and fax etc., but no certificate/ report of competent technical authority was furnished during the proceedings on objections.

Appeal No. 1454-1465/2006

As regards material produced by the dealer, in appeals No. 1454-1465/2006 and 1652-1661/2011, as per copy of bill of entry issued by India Custom EDI System – Imports (ICES/I), Mumbai, which pertained to invoice dated 12/12/2006, multifunctional printers were imported.

Contentions on behalf of Revenue

42. 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.

Learned Counsel for the Revenue has also referred to the paper books submitted on behalf of the Revenue to highlight the difference in the price of single function machines (s) in



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comparison to the multifunction machines prepared by Richo India Ltd., HP, Epson, Cannon, Brothers and then to the certificates submitted by the Manger of Cannon and other certificate issued by the representative of M/s. Konica Minolta Business Solution India Pvt. Ltd., and argued that these self serving certificates are of no evidentiary value, when the same appear to have been issued even without examination of the concerned machine(s).

43. 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.

Note 7 of Chapter 84 of Central Excise Tariff 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.

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 safely be said that on account of principal function of printing, the multiple function of the dealer-appellant, is to be treated as if printing-its principal purpose 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?

44. 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 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



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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, Laser Jet Printer, even as single 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);
- b. a laser jet printer, is a tariff item 8471 60 26 available in Central Excise Tariff;
- c. a laser jet printer, is a commodity described in column (2) of Entry 41 A of DVAT Schedule III;
- d. that a machine or device may be having more than one function, but keeping in view its predominant function, here the predominant function being the printing, said machine or device would not fall in residuary entry.



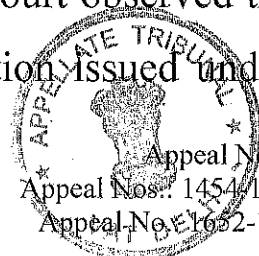
Classification of the product of the dealer with effect from 01/01/2007.

45. 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 heading 8443, no longer stand classified under heading 8471.60.

Learned counsel also mentioned that the purpose of placing the IT products in entry 41A of Sch. III, of the notification by the Government of Delhi, and prescribing lesser rate of tax leviable on such items, was to give boost to the IT products,

In this regard, reference may be made to decision in Ricoh's case (Delhi), where Hon'ble High Court observed that whether or not the reference in the notification issued under the VAT



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Act is "Legislation by Reference" or "Legislation by Incorporation", is not relevant need not to be decided.

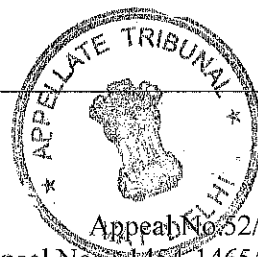
As regards Legislation by Reference and Legislation by Incorporation, so far as entry 41A as contained in IIIrd schedule of DVAT Act and so far as heading 8471 under Chapter 84 of Central Excise Tariff are concerned, learned counsel for the appellant has referred to decision in **Birla Jute and Industries Ltd. V. The State of Rajasthan and Ors.**, 1994(1) WLN 496, decided by Hon'ble High Court of Rajasthan and decision in **Jain Engineering Co. v. Collector of Customs, Bombay**, 1987 (32) E.L.T. 3(SC).

46. 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
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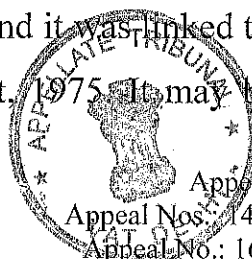


(HSN Code) 8443	Printing Machinery used for printing by means of plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof.
	<i>Other printers, copying machines and facsimile machines, 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.

47. 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

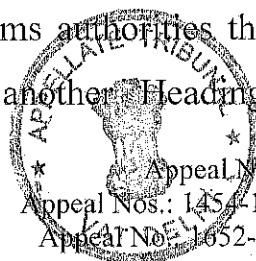


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Tariff Heading 8406 did not cover parts of internal combustion engine, however, the description column in the exemption notification included "parts" of the said engines. It was contended by the Government in that case that parts are not covered under 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



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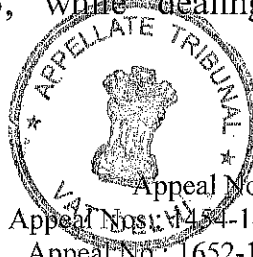
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Heading No. 84.06, will not get the exemption as provided in the Notification, is not readily understandable. When the Notification grants exemption to the parts of the engines, as mentioned under Heading No. 84.06, we find no reason to exclude any 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."

Relevant extract from Birla Jute And Industries Ltd.' case (supra) reads as under :-

"It was also contended that dumpers are not Motor Vehicles the meaning of definition of Motor Vehicles given under the Motor Vehicles Act, 1939 and the Act of 1988. It was also contended that Section 2(c) of the Act of 1988 makes a reference to the definition of Motor Vehicles given under the Act of 1939, the Act, of 1939 having been repealed the Act is left with no definition of Motor Vehicles, therefore, no tax can be levied.

In an earlier decision, in Rashid Mohd. v. State of Rajasthan and Anr. D.B. Civil writ Petition No. 3102/92 and 26 connected cases, decided on December 20, 1993, while dealing the same contention, it was held:



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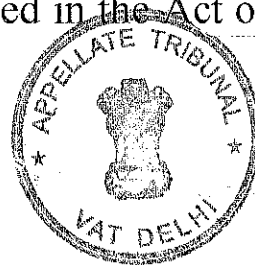
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“that though it is true that no corresponding amendment was made in the Act of 1988 that in place of Motor Vehicles Act, 1939, the Motor Vehicles Act, 1988 should be read bust so far as we are concerned, the definition of the 'Motor Vehicles' as given in the new Motor Vehicles Act, 1988 under Section 2(28) is substantially the same therefore, the reference of Motor Vehicles Act, 1939 in the Act will not make much difference for the purposes of this Act and the incident of taxation.”

In Birla Jute's case, Hon'ble High Court referred to observations by Lord Esher M.R. In re Woods Estate, Ex parte Her Majesty's Commissioners of Works and Buildings [(1836) 31 CH.D. 607], as to the effect of incorporation, which read as under:

“If a subsequent Act brings into itself by reference some of the clauses of a former Act: the legal effect of that, as has often been held, is to writ those sections into the new act just as if they had been actually written in it.”

In Birla Jute's case, Hon'ble Court held that repealing of the Motor Vehicles Act of 1939 would not have affected the definition of Motor Vehicle incorporated in the Act of 1988 by reference.

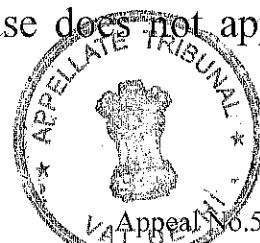


At the same time, considering the reference of Motor Vehicles Act of 1939 in the definition clause of Act of 1988 merely by reference of law on, Hon'ble High Court observed that reference to such law means 'that law' as it reads thereafter at the relevant time when the provision is to be invoked. Taking either view will not have affected the applicability of Act of 1988 to its subject 'Motor Vehicle' whether defined in 1939 Act or Motor Vehicles Act 1988.

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

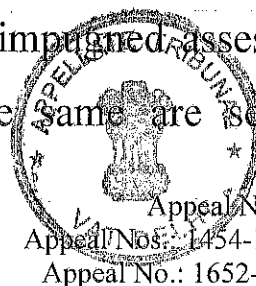
Therefore, decision in Birla Jute's case does not apply to the facts and circumstances of this case.



49. 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 in view of these findings.

Conclusion

50. 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 available in the invoices/ documents which ever were submitted by the dealer – appellant before Assessing Authority initially at the time of making of assessment and then during the objections, and accordingly issue fresh notice of assessment on the basis of said fresh calculations.

Penalty

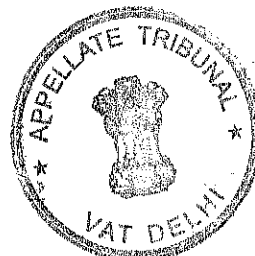
51. On behalf of the dealer – appellant, reference has been made to the second proviso of section 86(2), i.e. un-amended provision as it was prior to DVAT (Amendment) Act 2013 dated 9/9/2013 read with notification dated 11/9/2013.

The contention raised by learned counsel for the appellant is that this is a case where it was not clear as to whether the law is absolutely clear on the matter or not and that the authorities also had to issue clarification from time to time.

One of the submissions put forth by learned counsel for the appellant is that Govt. of India has been exempting certain IT products from levy of excise duty, for the benefit of the customers and so that such products are available at cheaper rate.

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Further it has been submitted that in the given facts and circumstances, it cannot be said that the tax was deliberately not paid by the said dealer at the rate prescribed for the goods falling in residuary entry. Learned counsel has urged that when it is not a case of deliberate defiance of law, provision of section 86(10) of the Act, could not be attracted and as such the order of penalty passed by the Assessing Authority and the order passed by learned OHA, upholding the said penalty, deserve to be set-aside.

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

Result

53. 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 invoices/ documents whichever were submitted by the dealer – appellant initially before the Assessing Authority at the time of making of assessment and

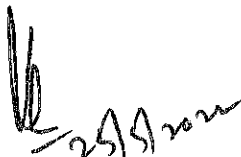


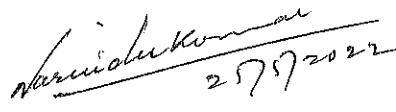
then during the objections, and accordingly to issue fresh notice of assessment on the basis of said fresh calculations.

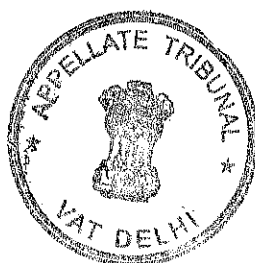
54. File be consigned to the record room. Copy of the judgment be placed in other sets of appeal 1454-1465/12 and 1652-1661/2011. Copy of the judgment be also supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 25/5/2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



52 / AT VAT / 18
Appeal No. 1652-1661 / AT VAT / 11 | 4508-15
1454-1465 / AT VAT / 12
Copy to:-

Dated: 27/5/22

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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

