

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

Appeal No. 270-271/ATVAT/2015

Date of Judgment: May 31st, 2022.

M/s. Digitronics Infosolutions Pvt. Ltd.,
207, M.G House, 2 Community Centre,
Wazirpur Industrial Area,
Delhi – 110 052.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

C.A. Representing the Appellant : Sh. Sushil Gupta
Counsel representing the Revenue : Sh. S. B. Jain

JUDGEMENT

1. Dealer – a private company – Assessee, having TIN No. 07160215045, has come up in appeals, feeling aggrieved by order dated 06/08/2015 passed by Ld. Special Commissioner –III/ OHA, whereby the objections filed by the said company- assessee against assessments of tax, interest and penalty, in respect of tax period 2011-12, have been rejected.

2. The assessments challenged before the Ld. OHA were framed by the Assessing Authority on 16/04/2015 u/s. 32 & 33 read with Section 86(12) of DVAT Act, whereby the dealer was



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directed to pay besides penalty, additional tax @12.5% instead of the rate charged by the dealer company in respect of the IT Products mentioned therein.

While framing assessments, Assessing Authority relied on determination orders dated 13/12/07, 09/10/10 & 08/07/2008 passed by learned Commissioner.

3. Ld. OHA upheld the assessments observing that the same were passed on the basis of determination orders already passed by the Ld. Commissioner, VAT.
4. In these appeals, the case of the appellant is that the multifunction printers are covered by entry 41A of Sr.No.3 of III Schedule; that LCD/TFT/LED Monitors are covered by Entry 41A of Sr.No.29 of III Schedule; that generally, a commodity cannot be classified in a residuary entry, in the presence of a specific entry, even if such specific entry requires the product to be understood in the technical sense.

As regards imposition of penalty, the case of the dealer – appellant is that no opportunity was given to the dealer before its imposition.

5. Arguments heard. File perused.



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Multifunction device

6. Department has levied tax on the multifunctional product/device @ 12.5%. As observed by the Assessing Authority the dealer – assessee was found to have sold multifunctional printer and TFT/LCD/LED Monitors by charging tax at a lower rate i.e. 5%. Department levied tax on higher rate in view of determination orders passed by learned Commissioner on 13/12/2007, 08/07/2008, 09/03/2010, 29/11/2013.

Case of the dealer is that TFT/LCD/LED Monitors and the multifunction device having functions of printing, scanning, faxing and copying was sold by the dealer appellant charging VAT @ 5% as it falls under Schedule IIIrd of DVAT Act, its principal function being printing.

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?



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

(A) Entry No.41 of Sch. III

This entry during the period from 1.4.2005 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.

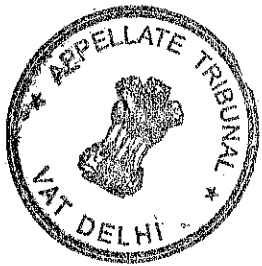
From 1.4.2010 onwards, said entry still contains *computers, telephone and parts thereof*.

(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, 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 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.

7. Here, the dispute pertains to rate of tax for the tax period 2011-2012.

As per case of the dealer, the disputed demand pertains to 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:"



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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?

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

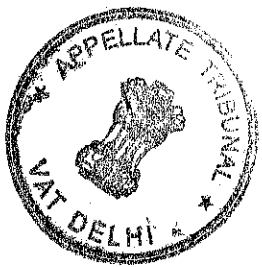
Significant to note that Serial No.3 of entry 41A available in Sch.III of DVAT Act, corresponding to Central Excise Tariff Heading 8471, has only one Heading. It is reproduced for convenience:

“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*



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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.

9. 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 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

10. As per claim of the dealer, the items in question were multifunctional printer and TFT/LCD/LED Monitors, all covered by entry No. 41A (Sr. No. 3) of Schedule IIIrd of DVAT Act.

Claim of the Revenue

11. Revenue has termed the device of the dealer as Multifunction printer and claimed that that since “multi functional printer”



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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.**

12. 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 Ricoh India Ltd.'s case, the same is binding in Delhi on all the dealers.

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.

13. 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".

We do not find any material on record to suggest that Multifunction machine or device falls in any of the following



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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,

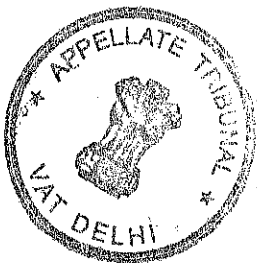
computer systems including personal computer,

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.”

14. 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 by this category-item 8471 49 00.



Case of appellant is that the multifunction device in question was having combination of more than two constituent units

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i.e. input, namely, scanner, fax and output unit, 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, machine or device having multi-functions including a predominant function , even though considered as an individual item, being “input units” and “output units” covered by description available 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.

15. 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



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in tariff item 8471 60 10 does not find mention in column (2) of entry No.41A.

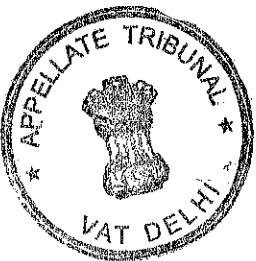
When description of this tariff item 8471 60 00 does not match fully with the description of goods as available in column (2) of entry 41A, *from the point of Central Excise Tariff*, the tariff item 8471 60 00 will not be covered by the scope of the notification available in DVAT Act, in view of Note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

Printer

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 :



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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

Scanner & Laser Jet Printer

“Scanner” finds mention against tariff item 8471 60 50 of Central Excise Tariff, 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



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under heading 8471 of First Schedule of Central Excise Tariff.

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

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

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

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



Copier

So far as "copier" is concerned, suffice it to observe that it does not find mention under any sub-heading or tariff item of heading 8471 or in any of the goods described in column (2) of entry 41A (Sr.No.3) of Schedule Third of DVAT Act.

Where a multiple function device has any predominant or principal function-Its effect?

17. In this regard reference was 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.



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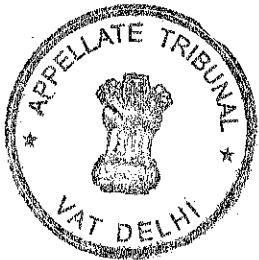
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In Xerox's case (2010) 14 SCC 430, having regard to the submission on behalf of the dealer that up to 85% of printer-related components were present in the machine and they were to function as printers, and as such the machines in dispute were required to be classified only under this heading 84.71, Hon'ble Apex Court while interpreting the relevant provisions for classification of imported machines Xerox Regal 5799 and Xerox XD 155df models, under sub-heading 8471.60 of the Customs Tariff Act, 1975, was of the view that printing function emerged as the principal function and same gave the said multifunctional machines its essential character.

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

Contentions on behalf of Revenue

18. As regards the percentage of the parts used in the multifunctional printer, 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.



19. As is available from the impugned assessment framed by learned Assessing Authority and the impugned order passed by learned OHA, it appears that books of account, stock register/details of items purchase and sold by the dealer-appellant in addition to tax and retail invoices were taken into consideration by the audit team and also by the Assessing Authority. As is available from the impugned assessment, authorised representative of the dealer has produced few documents before learned Assessing Authority. The dealer was asked to produce required documents, but on 11/02/2014 none appeared before learned Assessing Authority. It was subsequently that copies of more documents including details of items with rate of tax as charged, monthly sale details and other supporting documents required in day-to-day business was produced. Some documents were filed by the dealer before them.

Learned Assessing Authority had called upon the dealer to submit details of sale of multifunctional printer along with sale invoices. Thereupon learned Assessing Authority scrutinized documents along with list of sale of multifunctional printers.

It is significant to note that the department levied tax on the basis of determination orders and because item multifunction



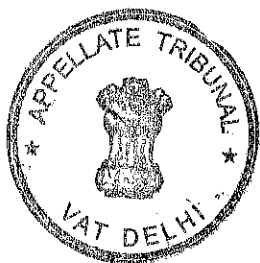
printer does not find mention in Entry No. 41A (sl. No. 3) schedule-III of DVAT Act.

There is nothing in the impugned order passed by learned OHA which may suggest filing of any document by the dealer-appellant during objections.

20. As noticed above, in **M/s Xerox India Limited v. Commissioner of Customs**, Mumbai, (2010) 14 SCC 430, 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, a multiple function printer is to be treated as a printer, as if said principal purpose that is printing were its sole purpose.



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When Laser Jet Printer appears as tariff item 8471 60 26 in Central Excise Tariff and also in column (2) of entry 41A under DVAT Act-Its effect.

21. Laser Jet Printer as an output 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.

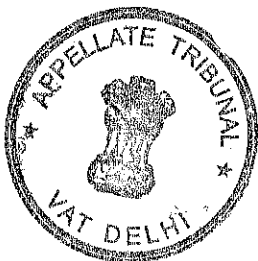
It is significant to note that no two input or output units from 8471 60 onwards as available in Central Excise List find mention in entry No.41A of DVAT Act. Laser Jet Printer finds mentioned in column No. (2) of entry No.41 A but as a single output unit.

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.

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 output unit is covered by Entry 41 A(Sr.No.3).

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, as an individual output unit, even if a unit of the multiple function device, but having printing as its pre-dominant function.

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); 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.

22. 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

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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.

23. 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.

Para 10 of the judgment reads as under :

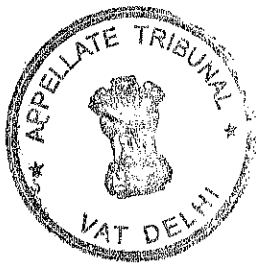
“Post 1st January,

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)	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.
8443	
	<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.



24. 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

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may be made to decision in **Jain Engineering Co. v. Collector of Customs, Bombay**, 1987 (32) E.L.T. 3(SC).

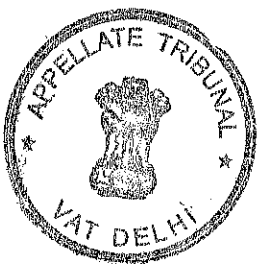
In Jain Engineering Co.'s case (supra), it was observed :

"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."



25. 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.

LCD/TFT/LED Monitors



Monitor is one of the items placed in entry No.41 (A) Sr.No.3 of Schedule IIIrd of DVAT Act.

For the reasons already given above and in view of the above findings, LCD Monitor, even if it does not find mention in

entry 8471 can safely be said to be exigible to tax under entry No.41 (Sr.No.3) of DVAT Act.

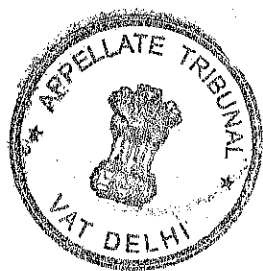
Accordingly, the impugned assessments made by the learned Assessing Authority and the impugned order passed by learned OHA upholding the levy of tax @ 12.5% as regards this item are hereby set-aside.

Result

Keeping in view the above said findings, fresh calculation is required to be made by the Assessing Authority. Assessing Authority to do the needful. Dealer-assessee to render assistance to the Assessing Authority as and when so required.

Penalty

26. 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.



27. No other argument was advanced by learned counsel for the parties.

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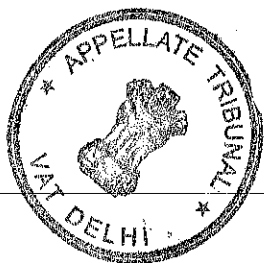
27/5

Result

28. 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 record / invoices / documents already submitted by the dealer – appellant before learned Assessing Authority, during the objections, and accordingly to issue fresh notice of assessment on the basis of said fresh calculations. Assessing Authority may have assistance of the dealer – assessee, and the latter to render assistance accordingly.
29. File be consigned to the record room. Copy of the judgment be placed in the connected sets of appeals. 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 : 31/5/2022



(Rakesh Baf) *[Signature]*
Member (A)

[Signature]
(Narinder Kumar)
Member (J)

Appeal No. 270/-271/ATVAT/2015/4580-87

Dated: 01/06/22

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. | |



[Signature]
REGISTRAR 1.6.22