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

Appeal No. 854-877/ATVAT/13
Date of Judgment: 27/05/2022

M/s. Micro Max Technologies P. Ltd
P-31, West Patel Nagar,
New Delhi – 110 008. .....Appellant

V.

Commissioner of Trade & taxes, Delhi .....Respondent

CA Representing the Appellant : Sh. D. N. Gupta.
Counsel representing the Respondent : Sh. C. M. Sharma.

JUDGMENT

1. The above captioned 24 appeals came to be filed by the Dealer-Assessee, feeling aggrieved by order date 23-08-2013, passed by learned OHA-Special Commissioner-I.

2. The dealer is feeling aggrieved by the order because its objections, u/s 74 of DVAT Act, against assessment made by the Assessing Authority, were rejected.

3. The Assessing Authority had framed assessments of tax, interest and penalty, in respect of tax period 2009-10, and raised following demands:

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Period to which objection relates & Amount in Dispute	Period DVAT 2009-10	**Tax + Interest (Rs.)**	**Penalty (Rs.)**
	April	18,39,483/-	20,51,448/-
	May	18,63,222/-	20,44,380/-
	June	22,13,295/-	23,72,660/-
	July	21,74,988/-	22,90,959/-
	Aug.	20,00,662/-	20,69,311/-
	Sept.	18,62,082/-	18,76,747/-
	Oct.	22,06,599/-	21,80,409/-
	Nov.	15,44,772/-	14,95,394/-
	Dec.	14,41,198/-	13,55,143/-
	Jan.	9,07,531/-	8,34,380/-
	Feb.	7,38,245/-	6,63,031/-
	March	8,47,329/-	7,36,293/-

4. Reasons given by Assessing Authority-VATO, for levy of tax, interest and penalty, as available in Annexure for the tax period April 2009-10, read as under:

"On scrutiny of books of accounts, stock register/ details about the items purchased & sold by the dealer during the year under audit and also tax & retail invoices; it is observed that the dealer has sold following type of LCD monitors, carry case amounting to Rs. 1,29,21,656/-, multifunctional printers amounting to Rs. 17,60,448/- as a single/ separate unit by charging the VAT @4% while these items are not covered under the list provided in the III[rd] Schedule of the DVAT Act.

Further as per determination No. 204/CDVAT/2008 dt. 08.07.08, LCD monitors are taxable @12.5% being unclassified/unspecified items and as per determination No. 158/CDVAT/2007/176 dt. 13.12.07, multifunctional printers are taxable @12.5% being unclassified/unspecified items. Hence, these items are taxable @12.5% instead of 4%.

Hence, the dealer is liable to pay differential VAT @8.5% i.e. Rs. 12,47,978/- on the sale amount of these items. Default assessment has been made u/s 32 of DVAT Act, 2004, along withinterest @15% p.a. as per section 42(2) of DVAT Act, 2004. Also, penalty u/s 33 read with section 86(12) of DVAT Act, 2004 is imposed.

During this month, the company has received **credit notes** amounting to Rs. 72,619/- of discount from M/s Sony India (P) Ltd., M/s Supertron Electronics Ltd. and M/s Tech Pacific India Ltd.which it reflects either reducing the purchases or reflect in the credit side of the trading account.

The amount of credit note received in the mode of discount on the purchases during this month ultimately reflects the reduction on value of purchases of the company. So the company is liable to reduce the input tax credit claimed on such discount which directly or indirectly effect to the purchases.

During the month the dealer has received the credit note for the discount on the local purchases for amounting to Rs. 72,619/-. But the dealer has not reversed the input tax credit @4% on the above

said discount/incentive which directly or indirectly affects the value of purchase. Hence input tax credit of Rs. 2,905/- is reversed.

Resultant tax deficiency attracts interest @15% p.a. Also, **penalty** u/s 33 read with 86(12) of DVAT Act, 2004 is imposed."

Reasons for framing of assessments in relation to other tax periods

5. It may be mentioned here that almost due to the abovesaid reasons, learned Assessing Authority framed assessment of tax, interest and penalty in respect of tax period from May 2009 to March 2010.

6. Feeling aggrieved by the said assessments, the objector filed objections u/s 74 (6) of DVAT Act. Learned OHA dismissed the objections.

7. While disposing of the objections u/s 74 of DVAT Act, Learned OHA observed that notices were issued to the Objector-Dealer from time to time, ever since 24-09-2012, till date, but despite many opportunities, none appeared before him, on behalf of the Objector-Dealer. Finally, notice for appearance was issued to the Dealer for 21-08-2013, but still no one responded.

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As further observed by Ld. OHA, Objector failed to adduce evidence or produce record in support of the objections.

Having gone through the assessments order and the objections filed by the Dealer, learned OHA found that the assessments framed by the Assessing Authority did not suffer from any infirmity. Accordingly, the objections wererejected.
Hence, these appeals.

8. Arguments heard. File perused.

9. One of the contentions raised on behalf of the Dealer-Appellant is that the Multifunctional Printers and LCD Monitors are part of Entry No. 41 and 41A of Schedule III[rd] of DVAT Act. In this regard, reference has been made to decision in **M/sXerox India Ltd. v/s Commissioner of Custom Mumbai,**(2010)14 SCC 430.

10. Learned counsel for the appellant has argued that pre-dominant purpose of the printer sold by the dealer is printing, and as such the beneficial interpretation shall go in the favour of the assessee-appellant, and accordingly, the product be subjected to tax @4% being covered by entry no 41A in the Schedule III of DVAT Act.

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As regards the determination order dated 13.12.2007, passed by the Commissioner in **Ricoh India Ltd. v. Commissioner,**2012 SCC Online Del 2579,Learned counsel for appellant has submitted that the same is not binding on the Dealer-Appellant.

Regarding Rejection of credit notes

In this regard case of the dealer as available in ground No. 5 of memorandum of appeal reads as under :

> "The Ld. Assessing Authority has rejected the credit notes received as incentive for purpose of turnover discounts. During the year on the basis of credit notes received neither the seller reversed the amount of credit notes from his input nor the purchaser appellant reduce output. The appellant has paid huge amount of tax during the year and has not normally sold goods at a price lower than the prevailing market price. The scheme of DVAT Act in this point is not followed by the Ld. Assessing Authority under the procedure the selling dealer reduces the output tax payable by him in the tax period in which he issues credit notes than the law requires. The purchasing dealer to reverse his input tax credit to that extent so that there is no loss of revenue to the ex-cheques, therefore the **input is wrongly referred by the Ld. Assessing Authority."**

Levy of Interest

In this regard case of the dealer is that levy of interest is against principles of law.

Imposition of penalty

On this point, as per ground taken in the memorandum of appeal, Assessing Authority imposed heavy penalty without issuing any notice.

Discussion

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

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

(A) Entry No.41 of Sch. III

This entry during the period from 1.4.2005 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 thereofand 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 is 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.

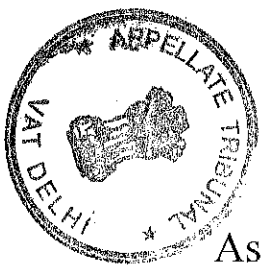
Note-(3) Subject to Note (2), for the purposes of any entry contained in this notification, where the description against any heading or, as the case may be, sub-heading, matches fully with the corresponding description in the Central ExciseTariff, then all the commodities covered for the purpose of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

12. Here, the dispute pertains to rate of tax for the tax periods Tax period April 2009 to March 2010.

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



"In the case of any other goods, at the rate of twelve and a half paise in the rupee"

As per case of the Revenue, multi function machine of the dealer-appellant is not covered by entry No.41A of Schedule

III of DVAT Act, and rather same is covered by the residuary entry.

Interpretation of the provisions of entry 41A (Sr.No.3) available in Sch. IIIrd of 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 is coded form and machines for processing such data."

This serial No.3 has no Sub-Heading.

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

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

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

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

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

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

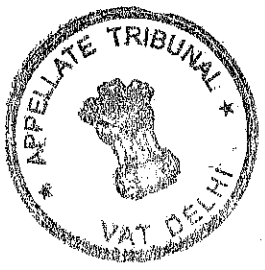
13. Be that as it may, for the purpose of classification of a product, we have to refer to relevant section notes and relevant chapter notes.

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

14. As per claim of the dealer, its items multi-functional machine/device are having pre-dominant purpose of printing and as such exigible to tax only at the rate prescribed for items falling against Sr.No.3 of entry No.41A of DVAT Act.

Claim of the Revenue

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

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

16. Learned Counsel for the Revenue has pointed out that in the application moved by Ricoh India Limited for determination of question u/s. 84, case of the applicant was that multifunction printers, copiers, scanners fall under HSN Code No. 8471.60.29 and the spares and consumables fall under HSN Code No. 8473.30.99.

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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. The reason for levy of higher rate of tax is that expression "Multifunction machine or Device" does not find mention in entry 41A(Sr.No.3) of DVAT Act.

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

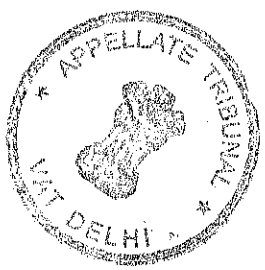
processing unit and could accept and deliver unrecognizable data. The dispute there was as to Chapter Note 5(B)(a).

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

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

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

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



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"

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

When description of this tariff item 8471 50 00 does not match fully with the description of goods as available in

column (2) of entry 41A,from the point of Central Excise Tariff, in view of Note (2) appended to the notification, the tariff item 8471 50 00 "Digital processing units (other than those of subheadings 8471 41 or 8471 49), whether or not containing in the same housing one or two of the types of storage units, input units, output units, will not be covered by the scope of the notification available in DVAT Act.

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

In 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.

This 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), a multifunction machine or device having a pre-dominant function 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

Scanner and Laser Jet Printer

18. "Scanner" 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"

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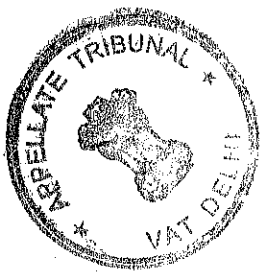
finds mention as tariff item 8471 60 26 as available under heading 8471 of First Schedule of Central Excise Tariff.

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

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

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



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

19. This comparison would reveal the difference as regards these tariff items available under Schedule Third of DVAT Act and

the tariff items as placed under the heading 8471, its sub-heading and the tariff items of the Central Excise Tariff.

Copier

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

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

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

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

It is to be seen as to whether the machine of the dealer has any principal purpose, as claimed by the dealer, or it is a machine

where no one purpose is the principal purpose, as claimed by the Revenue.

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 8471was also relevant as predominant components of the devices in that case related to printing function.

Here, from the impugned assessment framed by Assessment Authority it cannot be said as to which document if any was filed by the dealer before learned Assessing Authority on the point of pre-dominant function or component of the device. As noticed above the dealer failed to participate in the proceedings pertaining to objection, what to say of production of any document.

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

Contentions on behalf of Revenue

21. 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 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).

22. As noticed above, in Xerox case (2010), it was on the basis of percentage of parts and components coupled with

manufacturing cost allocated to printing, Hon'ble Apex Court observed that the principal function of the machines-subject matter of that case-was printing and said function provided its essential character to the multifunctional machine.

Taking a cue from the decision in Xerox case, note 7 of Chapter 84 and applying the same to the facts of present case, learned Assessing Authority can scrutinise the concerned invoices or other document already filed by the dealer, as to the principle function of the multi-function machine/device description of which find mention in each assessment model-wise, so that he is able to make fresh calculations.In case on account of principal function of printing, the multiple-functionmachine of the dealer-appellant is found to be printer, the machine shall be treated as if printing-its principal purpose were its sole purpose, and in such a situation said machine or device is to be treated as printer and exigible to tax prescribed for items mentioned in entry No.41(Sr.No.3) of DVAT Act.

23. 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. 41A 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.

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

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

In other words, Laser Jet Printer, even as single output unit is covered by Entry 41A(Sr.No.3). It would still fall in this entry even if a multiple function device, when its pre-dominant function is printing.

In view of the above discussion, we hold that

(a) a laser jet printer, is covered by the expression "Unit of

heading 8471" (as per note 5(D) of Chapter 84) and is a commodity described in column (2) of Entry 41A of DVAT Schedule III;

(b) that a machine or device may be having more than one function, but keeping in view its predominant function, in case the predominant function is, for example, printing, said multiple function machine or device, having laser printer as one of its units, would not fall in residuary entry.

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

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

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.

25. 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 contains the following particulars as regards post Ist January 2007:

> Post 1st January,
>
> 2007, amendment was made to the tariff item 8443 and 8471 and the relevant changes are as under:-

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

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.

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

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

"24. In that case, the exemption Notification under the Customs Act, 1962, mentioned internal combustion piston engine as well as parts thereof in the description and it was linked to Tariff Heading 8406 of the Customs Tariff Act, 1975. It may be noted that the Tariff Heading 8406 did not cover parts of internal

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

> "10. In view of our finding that the Notification exempts also parts of the engines mentioned in Paragraph 2 of Column (2) of the Table, in order to avail of the benefit of the exemption granted by the Notification, it has to be proved that the parts in respect of which the exemption is claimed, are parts of the internal combustion piston engine, as mentioned under Heading No. 84.06. Some of such parts may have been included under Heading No. 84.63. In other words, as soon as it is proved that the parts are of the engines, mentioned in Heading No. 84.06, such parts will get the benefit of exemption as provided by the Notification, irrespective of the fact that they or any or some of them have already been included under Heading No. 84.63 or under any other heading. Therefore, even if bushings are the same as bearings, still they would come within the purview of the Notification, provided they are parts of the engines mentioned under Heading No. 84.06. The contention of the Customs authorities that the article, which is provided under another Heading other than

Heading No. 84.06, will not get the exemption as provided in the Notification, is not readily understandable. When the Notification grants exemption to the parts of the engines, as mentioned under HeadingNo. 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."

27. 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 the above findings, after going through the material already available with the learned Assessing Authority as to the principle function of the multi-function machine/device description of which find mention in each assessment model-wise.

In case on account of principal function of printing, the multiple-function machine of the dealer-appellant is found to be printer, the machine shall be treated as if printing-its principal purpose were its sole purpose.

LCD Monitor

28. 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% are hereby set-aside.

Conclusion

29. 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 documents, if any, already available with the learned Assessing Authority, having been submitted by the dealer – appellant and accordingly issue fresh notice of assessment on the basis of said fresh calculations.

Penalty

30. 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.

31. No other argument, including the point of credit notes, was advanced by learned counsel for the Appellant.

Result

32. 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 as regards LCD monitor and multifunction machine or device, keeping in view the above findings and the information already made available in the documents , by the dealer – appellant to learned Assessing Authority,and accordingly, to issue fresh notice of assessment on the basis of said fresh calculations. Learned Assessing Authority may have assistance of the dealer-assessee-appellant, and the latter shall provide assistance to the Learned Assessing Authority as and when so desired.

33. File be consigned to the record room. Copy of the judgment be also supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 27/05/2022

(Rakesh Bali)
Member (A)

27/5/22
(Narinder Kumar)
Member (J)

APPELLATE TRIBUNAL VAT DELHI

Appeal No. 854-877/APVAT/13/4572-79 Dated: 01/06/22

Copy to:-

(1) VATO (Ward-)
(2) Second case file
(3) Govt. Counsel
(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.
(6) Dealer
(7) Guard File
(8) AC(L&J)

REGISTRAR

16.22