

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

Appeal No. 600-623/ATVAT/13

Date of decision: 25/05/2022

M/s. Redington India Ltd.,
E-47/12, Okhla Industrial Estate, Phase –II,
Delhi – 110 020.

.....Appellant

V.

Commissioner of Trade & taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. V. Lakshmikumaran

Sh. Atul Gupta

Counsel representing the Respondent : Sh. C. M. Sharma

Appeal No. 385-408/ATVAT/13

Date of decision: 25/05/2022

M/s. Xerox India Ltd.
B-236, Okhla Industrial Area,
Phase-I
Delhi – 110 020.

V.



.....Appellant

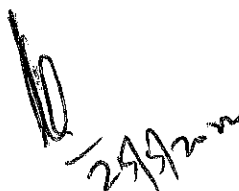
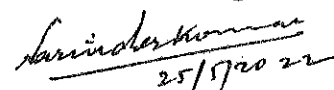
Commissioner of Trade & taxes, Delhi.

..... Respondent

Counsel representing the Appellant : Sh. V. Lakshmikumaran,

Sh. Atul Gupta,

Counsel representing the Respondent : Sh. C. M. Sharma

 25/5/2022
 25/5/2022

Appeal No. 661-684/ATVAT/13

Date of decision: 25/05/2022

M/s. Compro Computers India Pvt. Ltd.
Flat No. B, South Patel Nagar Market,
New Delhi – 110 019.

..... Appellant

V.

Commissioner of Trade & taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. V. Lakshmikumaran
Sh. Atul Gupta

Counsel representing the Respondent : Sh. C. M. Sharma

Appeal No. 336-345/ATVAT/12

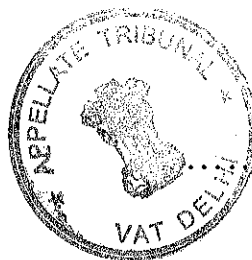
Appeal No. 492-497/ATVAT/13

Appeal No. 848-853/ATVAT/13

Date of decision: 25/05/2022

M/s. Ingram Micro P. Ltd.
D-13/5, Okhla Industrial Area
Phase-II,
New Delhi – 110 020.

V



..... Appellant

Commissioner of Trade & taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. V. Lakshmikumaran
Sh. Atul Gupta

Counsel representing the Respondent : Sh. C. M. Sharma

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25/5/22

Appeal No. 359-384/ATVAT/13

Date of decision: 25/05/2022

M/s. Hewlett Packard India,
E Floor, Hotel Crown Plaza,
New Friends Colony,
New Delhi .

..... Appellant

V.

Commissioner of Trade & taxes, Delhi

..... Respondent

Counsel representing the Appellant : Sh. V. Lakshmikumaran,
Sh. Atul Gupta

Counsel representing the Respondent : Sh. C. M. Sharma.

Appeal No. 498-545/ATVAT/13

Appeal No. 140-165/ATVAT/14

Appeal No. 421-426/ATVAT/17

Appeal No. 160/ATVAT/19

Date of decision: 25/05/2022

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M/s. Canon India Pvt. Ltd.
Unit No. 214-218, 2nd Floor,
Narain Mauzil,
Barakhamba Road,
New Delhi – 110 001.



..... Appellant

V.

Commissioner of Trade & taxes, Delhi

..... Respondent

25/5

25/5

Counsel representing the Appellant : Sh. V. Lakshmikumaran
Sh. Atul Gupta
Counsel representing the Respondent : Sh. C. M. Sharma

Appeal No. 64/ATVAT/18
Date of decision: 25/05/2022

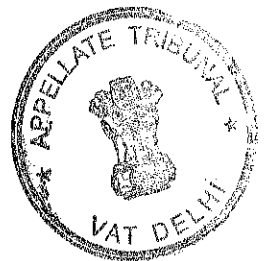
M/s. Konica Minolta Business Solution India Pvt. Ltd.
1304, 13th Floor, Mohan Dev Building,
13 Tolstoy Marg, Connaught Place,
New Delhi – 110 001.

..... Appellant

V.

Commissioner of Trade & taxes, Delhi Respondent

Counsel representing the Appellant : Sh. V. Lakshmikumaran
Sh. Atul Gupta
Counsel representing the Respondent : Sh. C. M. Sharma.



JUDGMENT

1. This common judgment is to dispose of all the above mentioned appeals. All appeals are being taken up together as common questions are involved.

Earlier this Appellate Tribunal vide common judgment dated 4.7.2018 decided some appeals filed by the above named

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appellants. The decision was challenged before the Hon'ble High Court and the judgment dated 4.7.2018 was set-aside with the direction to the Appellate Tribunal to re-hear the appeals for their decision afresh.

While remanding the matter to this Appellate Tribunal, Hon'ble High Court directed that the Tribunal shall proceed to hear and dispose of the appeals in accordance with law, after considering contention of the parties.

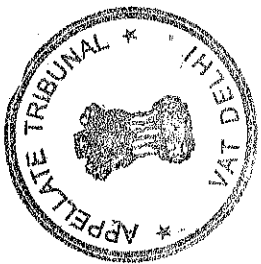
First The Facts

Appeal No. 600-623/ATVAT/13, M/s. Redington India Ltd.,

2. By way of these ¹24 appeals, dealer-assessee has challenged impugned order dated 29th July, 2013 passed by learned Objection Hearing Authority – Special Commissioner – 1.
3. Matter pertains to tax period 2008-2009.

Vide impugned order, learned OHA has decided the objections filed by the dealer-assessee u/s 74 of DVAT Act.

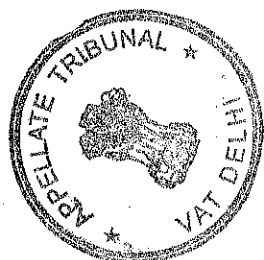
The objections were filed challenging assessments of tax, interest and penalty framed by the Assessing Authority – VATO vide u/s 32 and 33 of DVAT Act, for the tax period 2008-2009.



4. Following demands raised by the Assessing Authority for the aforesaid tax period triggered filing of the objections:

Period to which objection relates & Amount in Dispute	Period 2008 -09	Tax (Rs.)	Interest (Rs.)	Penalty (Rs.)
* While dealing with the objections, Learned OHA rejected the contention	April 2008	13,08,708/-	7,85,225/-	27,35,199/-
	May "	8,69,379/-	5,11,981/-	17,86,662/-
	June "	15,80,581/-	9,11,324/-	31,76,967/-
	July "	16,14,691/-	9,10,420/-	31,80,941/-
	Aug. "	10,98,568/-	6,05,416/-	21,09,250/-
	Sep. "	12,36,174/-	6,66,010/-	23,24,007/-
	Oct. "	9,69,700/-	5,10,089/-	17,74,551/-
	Nov. "	6,67,060/-	3,42,668/-	11,94,037/-
	Dec. "	12,68,879/-	6,35,656/-	22,20,538/-
	Jan. 2009	6,97,105/-	3,41,772/-	11,92,049/-
	Feb. 2009	7,23,215/-	3,45,954/-	12,07,769/-
	March 2009	24,32,988/-	11,32,839/-	39,41,440/-

5. While dealing with the objections and the contention raised on behalf of the dealer that Multi-Functional Printers are liable to be covered under Entry No. 41-A of Schedule 3rd of DVAT Act, as



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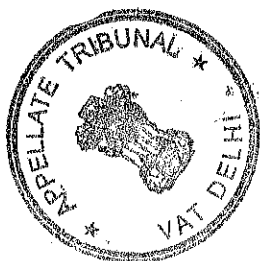
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“Laser Jet Printer” and the same should be charged to tax at the rate of 4 per cent, learned OHA observed in the manner as:

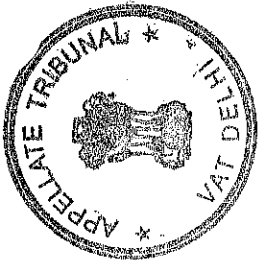
“The objector dealer is reseller of HP products. The classification of multi-function printers is covered in the order disposing the objections filed by M/s H.P India Ltd. vide order No. SCTT-I/obj./278 & 492/12-13/196-199 Dt. 9th April 2013 passed by Special Commissioner I. During the hearing of the present objection the objector had submitted a request on 3/07/13 wherein it had suggested that tax liability on subsequent whole seller /retailer/resellers is to be restricted only on value addition component in the supply chain.

A detailed order for classification of multi-function printers has already been passed in the said case. The crucial observations analyzing the issues are contained in Para 14, 15, 17 to 39 of the said order and the final conclusion on the main issue is summarized at para 35 is cited below:

35. To sum up the analysis it is stated that the evidence furnished by the objector does not stand up the scrutiny of predominant function test laid down by the Hon'ble High Court of Delhi. The MF Devices on basis of documentation are found to be entirely different from the entry in the Third Schedule which is further qualified by the observations of Hon'ble High Court of Delhi. The contention of the objector that the devices can be covered merely as Laser Jet Printers also does not hold water for the reason that their working of these devices is much more complex and different



from a printer which is an input and output device used for functioning as printer. Rules of interpretation given in Third Schedule of DVAT Act establish that absence of precise entry in respect of these items leaves no option except to classify the same as residuary entry. The items mentioned at entry No. 41-A include automatic data processing devices... Line Printer, Dot matrix printer, Letter quality daisy wheel printer, Graphic printer, Plotter, **Laser Jet printer**,, storage units, floppy disc drive. Nowhere multifunctional device or multifunctional printers have been specified in this schedule. For Laser Jet Printers and input, output devices there are specific entries. MF devices however do not get covered by these entries, which relate to items of specific description. Item is thus taxable @12.5% under the DVAT Act, 2004 and orders of Ld. AA are upheld in this regard."



On the point of levy of penalty, while dealing with the objection raised on behalf of the dealer-objector that VAT officer had imposed penalty without justification and without affording any opportunity, and also that net tax demand be registered on value addition turnover portion, learned OHA rejected this contention by observing in the manner as:

"The scheme of DVAT Act is such that the penalty comes into picture automatically in case of default. Issue of violation of Principles of Natural Justice and desirability of offering opportunity of hearing as per scheme of DVAT Act has been

discussed in detail by Hon'ble High Court of Delhi in W.P.(C) No.4236/2012 wherein it has been held that

"Principles of Natural Justice cannot be deemed to be violated simply for the reason that opportunity for hearing was not afforded to the dealer. Such provisions are attracted only if there is a definite evidence to show that a gross injustice has been done."

The demand created by way of penalty is therefore liable to be upheld. The contention of the objector regarding levy of penalty on the portion of valued addition turnover can be examined while giving the credit of input tax credit and output tax after the final outcome of the additional tax imposed. I decide accordingly."

Ultimately, learned OHA rejected the objections.

6. As per notice of default assessment of tax and interest, u/s 32 of DVAT Act, issued by the Assessing Authority, the assessment was made due to the following reasons:

"As per return it has been observed that the dealer has made local sale of Multipurpose/Multi-Functional Printer for Rs. 1,85,95,100/- @ 4%.

An opportunity/SCN dated 18-05-2012 has been given to the dealer in the light of order of Hon'ble Delhi High Court dated 04-05-2012 to clarify the principal or dominant purpose of machine.

The dealer has failed to provide the documentary/technical specification evidence in respect of principal or dominate purpose

of the machine in support of his claim. Hence in the absence of documents I am left with no option but to treat the sale of Multipurpose/Multi-Functional Printers/Devices under other, general category or residuary tax rate i.e. 12.5%. The default assessment u/s 32 of DVAT Act, 2004 is framed and the sale of Rs. 1,85,95,100/- is taxed @ 12.5%. Therefore, the dealer is liable to pay differential VAT @ 8.5% with interest @ 15% p.a. under the provision of section 32 read with section 34 of DVAT Act, 2004.”

As regards penalty, the Assessing Authority framed assessment u/s 32 read with Section 32 of DVAT Act and Section 86(12) of DVAT Act, because of tax deficiency.

7. In the grounds of appeal, dealer – assessee has averred that the learned VATO – OHA failed to apply the ratio of decision in **Ricoh India Limited v Commissioner on 4 May, 2012** and the technical submissions provided.

As further submitted, the technical submissions confirmed the fact that the product of the dealer – appellant has usage solely or principally with automatic data processing equipments. Reference has also been made to decision in Xerox India Limited by our own Hon’ble High Court, wherein it has been held that determining for classification of multi-function machines, concept of dominant purpose is also to be taken into consideration.



In the grounds of appeal, reference has been made to copy of letter filed by M/s. HP India Ltd. with Revenue, to submit that learned OHA failed to consider this evidence during objections.

- Penalty ✓
8. On this point, case of the dealer – appellant is that learned OHA failed to apply the settled legal position that levy of penalty should arise only in the event of deliberate intention to contravene the provisions of law, and not in a case where breach arises from a bonafide belief in adopting a position.

- Interest ✓
9. On this point, in the grounds of appeal, it has been averred that learned OHA erred in confirming the interest levied in full, without taking into consideration that such liability is to be restricted only on the value addition.

However, in the course of final arguments, no such contention on the point of interest has been raised on behalf of the dealers.

Appeal No. 385-408/ATVAT/13, M/s. Xerox India Ltd.

10. The dealer is feeling aggrieved by orders passed by Ld. Objection Hearing Authority, as their objections u/s 74 of DVAT Act have been rejected/dismissed.

The matter pertains to tax period April, 2008 -09 to March, 2008-09.

11. The objections were filed by the dealers challenging notices of default assessment of tax, interest & penalty as framed by Ld. Assessing Authority. The assessments were framed in respect of different tax periods, while observing that multi function machines, products of the dealers, were exigible to tax under the residuary entry, and not under entry 41 A of schedule-III of DVAT Act.

12. It may be mentioned here that as per case of the dealers-appellants, they were charging tax in respect of the said products @ 4%/5% (as per the rate of tax applicable at the relevant time), treating the same as multifunction printers. On the other hand, case of the revenue has been that the said products were exigible to tax @ 12.5%, same being not covered by entry 41 A of schedule III of DVAT Act, same being multifunctional devices/machines.



13. The previous decision by this Appellate Tribunal was challenged before the Hon'ble High Court dated 4.7.2018 was set-aside with the direction to re-hear the appeals for their decision afresh in accordance with law, after considering contention of the parties.

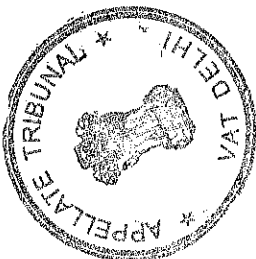
Hon'ble High Court further observed that it shall be open to the parties to rely on all materials and the VAT Tribunal may also seek further remand report/factual report from the concerned

Assessing Authority with respect to the functionality of the products and any other related technical inputs and that while doing so, the Tribunal should specify the parameters of inquiry and not to keep it open ended.

It is significant to note that as observed by Assessing Authority no material was filed by the dealer before him in respect of principal purpose of the machine.

Reference of documents relied on by the dealer-Objector before Ld. OHA finds mention in para 5 of the impugned order.

In the course of arguments, on behalf of the dealers, reliance has *also* been placed on the following :

- 
- (a) European Community – Binding Tariff Information;
 - (b) Certificate issued by Director Systems, HP India Sales (P) Ltd., regarding specification of multifunction printers;

Appeal No. 661-684/ATVAT/13, M/s. Compro Computers India Pvt. Ltd.

14. By way of these 24 appeals, dealer-assessee has challenged order dated 31/07/2013 passed by learned Objection Hearing Authority – Joint Commissioner (Special Zone).

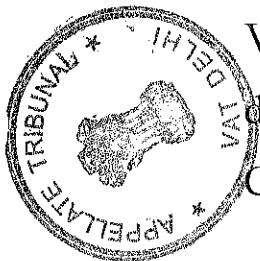
Matter pertains to tax period from April 2008-2009 to March 2008-2009

By impugned order, learned OHA has rejected the objections filed by the dealer u/s 74 of DVAT Act.

The objections were filed by the dealer against assessments of default assessment of tax and interest u/s 32 of DVAT Act and assessment of penalty u/s 33 of DVAT Act.

Demand of tax and interest was made by the Assessing Authority in respect of said tax period, in addition to levy of penalty.

Assessment of tax and interest was framed due to the reason that the dealer, while making sale of Multi-functional Printer charged VAT @ 4 per cent in place of 12.5 per cent, even though determination orders 13/12/2007 and 09/03/2010, passed by the Commissioner (Trade and Taxes) had already been issued.



Penalty was imposed by the Assessing Authority on account of tax deficiency, because of charging of VAT only @ 4 per cent in place of 12.5 per cent, and violation of provision of u/s 86(12) of DVAT Act.

Learned OHA has dismissed the objections, while observing that the Assessing Authority framed assessments raising additional

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demands in accordance with the determination orders passed by the Commissioner.

Hence, these appeals.

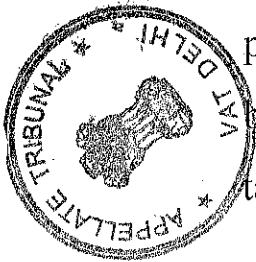
In the course of arguments, on behalf of the dealers, reliance has *also* been placed on the following :

- (a) European Community – Binding Tariff Information;
- (b) Certificate issued by Director Systems, HP India Sales (P) Ltd., regarding specification of multifunction printers;

Appeal Nos. 336-345/ATVAT/12; Appeal Nos. 492-497/ATVAT /13; Appeal Nos. 848-853/ATVAT/13, M/s. Ingram Micro P. Ltd.

APPEAL NO.- 336-345

15. The dealer is feeling aggrieved by order dated 10-02-2012, passed by Ld. Special Commissioner, whereby objections filed by the dealer u/s 74 of DVAT Act against default assessment of tax, interest and penalty, have been rejected.



The default assessments of tax and interest pertained to the tax period **April, May, June, July and August 2005** whereas, the assessment regarding levy of penalty pertains to tax period April, May, July and August 2005.

The Assessing Authority framed assessment on tax and interest while observing that the dealer had made sale of multipurpose/multi-functional printers charging VAT @ 4%, whereas, VAT was to be charged @ 12.5%, as per determination order dated 13-12-2007, passed by Learned Commissioner (Trade & Taxes), whereby, it was decided that multifunctional printers and sales of spares do not find any mention in any of the Schedule of DVAT Act.

Penalty came to be imposed due to tax deficiency and violation of provisions of section 86 (12) of DVAT Act.

16. While rejecting the objections against the assessment, Ld. OHA observed that multifunctional products being not covered by any of the entry of Schedule III of DVAT Act, are general or unclassified goods, and have been rightly subjected to tax @ 12.5%.



Appeal No.- 492-497

17. This set of appeals has been filed by the dealer-assessee challenging rejection of objections u/s 74 of DVAT Act. Appellant is feeling aggrieved by order dated 5/6/2013 passed by learned OHA. These pertain to default assessment of tax and

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interest for the period from **April 2008 to September 2008**, which were framed by the Assessing Authority, vide order dated 29-05-2012, u/s 32 of DVAT Act, in respect of sale of Multi-purpose/Multi-Functional printers ^{on which} ~~in respect of which~~ VAT @ 12.5% was to be charged.

Appeal No. 848-853

18. This set of appeals pertain to **tax period 2008-09**. The objections filed by the dealer u/s 74 of DVAT Act came to be disposed of by learned OHA. The objections were filed challenging levy of tax, interest and penalty.

Vide notice of default assessment of tax and interest, u/s 32 of DVAT Act, dated 14-06-2012, while rejecting the contention of the dealer that main function of the product is printing, Assessing Authority levied tax and interest upon the dealer, due to the following reason:



“Hence the dealer contention that the main function of their product is printer is not acceptable. Further **none of the dealer’s brochure/sale bill invoices proves that their products solely used for input or output units**. Rather than these are multi-functional machine having Photocopier machine/Fax/Scanner/Printing/ E-mail/Phones facilities in it. Moreover, the dealer himself sold its product by the name of code i.e. multi-functional devices code and too much price difference between a simple Printer or

MFP is also suggest that the dealer's Multi-functional machines/Devices which were sold during the year 2008-09 are not input or output unit under entry 41A (Serial No. 3 of Third Schedule).

Hence, the reply filed by the dealer, specification of Multi-functional printers/Brochures and copies of sale invoices are not found satisfactory and are treated under other, general category or residuary tax rate i.e. 12.5%. The default assessment u/s 32 of DVAT Act, 2004 is framed and the sale of Rs. 2,35,40,767/- in the month of September-08 is taxed @ 12.5%. Therefore, the dealer is liable to pay differential VAT @ 8.5% with interest @15% p.a. under the provision of section 32 read with section 34 of DVAT Act, 2004, The deficiency of tax thus arise i.e. of Rs. 20,00,365/- is assessed to the penalty u/s 86 (12) of the DVAT Act 2004."



Vide notice of penalty dt. 14-06-2012, the Assessing Authority levied penalty upon the dealer, for the tax period 2008-09, u/s 33 of DVAT Act, due to the reason that the dealer violated provisions of Section 86 of DVAT Act.

Vide impugned order; Ld. OHA upheld the assessment of tax and interest and levy of penalty.

Appeal No. 359-384/ATVAT/13, M/s. Hewlett Packard India.

19. The Dealer Company-Assessee is feeling aggrieved by order dated 9.4.2013 passed by Ld. OHA-Special Commissioner (I).

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Vide Impugned order Ld. OHA disposed of 26 objections filed by the dealer company against assessment of tax, interest & penalty framed by Assessing Authority Ward-202 (KCS) on 22.6.2012.

The assessments pertains to the tax period 2005-06 & 2008-09.

20. Only two objections were filed against the assessments of tax-period 2005-06. Remaining 24 objections pertained to the tax period 2008-09.

Case of the dealer – appellant is that this company is engaged in the business of purchase and sale of IT Products like computers, printers and multifunction devices in the State of Delhi. While framing assessment, learned Assessing Authority considered the issue of classification of multifunction devices sold by the Dealer Company, in view of determination order dated 13.12.2007 already passed by Ld. Commissioner u/s 84 of DVAT Act.

The determination order was to the effect that multifunction printer and sales of spare parts thereon are not covered by entry no. 41 A of schedule IIIrd of DVAT Act, and as such they attract tax @ 12.5%, same being covered by the residuary item.



21. While dealing with the objections filed by the dealer company against the assessment of Tax & interest, and the contentions /grounds raised on behalf of the dealer, Ld. OHA concluded in para No. 35 of the Impugned Order as under:-

“To sum up the analysis it is stated that the evidence furnished by the objector does not stand up the scrutiny of predominant function test laid down by the Hon’ble High Court of Delhi. The MF Devices on basis of documentation are found to be entirely different from the entry in the Third Schedule which is further qualified by the observations of Hon’ble High Court of Delhi. The contention of the objector that the devices can be covered merely as Laser Jet Printers also does not hold water for the reason that their working of these devices is much more complex and different from a printer which is an input and output device used for functioning as printer. Rules of interpretation given in Third Schedule of DVAT Act establish that absence of precise entry in respect of these items leaves no option except to classify the same as residuary entry. The items mentioned at entry No. 41-A include automatic data processing devices Line Printer, Dot Matrix printer, Letter quality daisy wheel printer, Graphic printer, Plotter, Laser Jet printer, storage units, floppy disc drive. Nowhere multifunctional device or multifunctional printers have been specified in this schedule. For Laser Jet Printers and input, output devices there are specific entries. KF devices however, do not get covered by these entries, which relate to items of specific description. Item is thus taxable @



12.5% under the DVAT Act 2004 and orders of Ld. AA are upheld in this regard."

Ld. OHA also did not find any merit in the objection on the point of levy of interest.

Ld. OHA also upheld levy of penalty and rejected the objections raised against its imposition by observing that, as per scheme of DVAT ACT, penalty comes into picture automatically in case of default.

22. It may be mentioned here that during objections, when on behalf of the dealer, certain calculation errors in the orders for the year 2008-09 were pointed out, Ld. OHA deemed it appropriate to refer the matter to the Assessing Authority, on this limited point, with directions for reframing the assessment for the year 2008-09, but upheld the orders regarding levy of tax & interest and imposition of penalty for the tax period 2005-06 & 2008-09 (Annual).

In the course of arguments, status of said proceedings on remand has not been brought to our notice.

Before us, following documents have also been relied on:

- (a) European Community – Binding Tariff Information;
- (b) Certificate issued by Director Systems, HP India Sales (P) Ltd., regarding specification of multifunction printers;



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- (c) Chart depicting rate of use of printer and table depicting typical output by function.

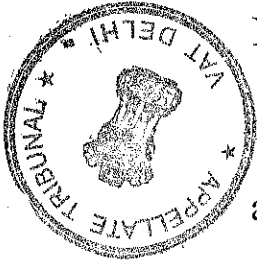
Appeal No. 498-545/ATVAT/13; Appeal No. 140-165/ATVAT/14;

Appeal No. 421-426/ATVAT/17; Appeal No. 160/ATVAT/19;

~~Appeal No. 421-426/ATVAT/2018;~~

M/s. Canon India Pvt. Ltd. — Appeals no. 421-426/17.

23. These appeals pertain to tax period **Annual 2008-2009, Annual 2010-2011 and Annual 2012-2013**. Dealer-appellant was registered with Department of Trade and Taxes, Delhi vide TIN No.07620195392.



The dealer - assessee is feeling aggrieved by notices of assessments of tax and interest issued on 31/3/2017 by the Assessing Authority, issued under Central Sales Tax Act, 1956, in respect of the aforesaid tax periods 2008-2009, 2010-2011 and 2012-2013.

24. As per the details available in the impugned order, demands made by way of assessments framed by the Assessing Authority were as under:

S. No.	Reference No.	Date of filing the objection	Date of notice of assessment of tax & interest & penalty	Tax period	Amount in Rs.(under DVAT Act)		Amount in Rs.(under CST Act)	
					Tax & Interest	Penalty	Tax & Interest	Penalty
1	94762	24.02.2015	11.06.2012	FY 2008-09	-	-	26,82,353	-
2	92808	15.02.2015	28.01.2015	FY 2010-11	2,04,93,114	-	-	-
3	92810	15.02.2015	28.01.2015	FY 2010-11	-	2,73,46,677	-	-
4	92809	15.02.2015	28.01.2015	FY 2010-11	-	-	34,61,432	-
5	92811	15.02.2015	28.01.2015	FY 2010-11	-	-	-	46,05,801
6	268669	24.05.2017	31.03.2017	FY 2012-13	1,59,21,802	-	-	-



The dealer is engaged in the business of import and sale of multifunctional printers, printers, their parts and cartridge, fax machines and its parts, scanner and its parts, digital cameras and parts, copier and copier parts and projectors and its parts etc.

25. The Assessing Authority framed assessments in respect of above said three tax periods, due to the following reasons:

In respect of FY-2008-09

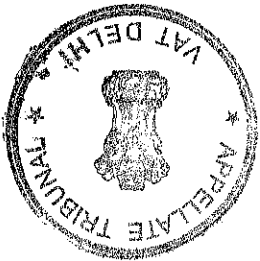
- a. "In respect of FY-2008-09, the Assessing Authority issued notice of default of assessment of tax and interest under CST Act creating demand alongwith interest on account of non-submission of C forms of Rs.22,72,897/- and non-submission of F Forms for Rs.6,389/- by the objector dealer during assessment. Further major portion of demand is created by levying higher tax rate @12.5% on interstate sales (without Central Forms) of multifunctional printers/ devices as residuary items under DVAT Act-2004 as against the charging of tax on said item @4% by the objector dealer in the returns. The objector dealer made central sales of multifunctional printers/ devices of Rs.2,01,76,101/- without C forms charging VAT @4% during the said period, whereas the Assessing Authority considered and treating the said items as unclassified/ unspecified item taxable at residuary rate @12.5%, accordingly demands of tax and interest are created in respect of FY-2008-09.

In respect of FY-2010-11

- b. In respect of FY-2010-11, Assessing Authority issued assessment orders of tax, interest as well as penalty under DVAT Act-2004 as well as CST Act-1956. The Assessing Authority observed that the dealer has sold various types of multifunctional printers/ devices by charging VAT @5% while these items are not covered under the list of items provided in Third Schedule of DVAT Act-2004. The Assessing Authority further observed that as per Determination order no. 158/CD VAT/2007/176 dated 13.12.2007, multifunctional



printers are taxable @12.5% being unclassified/unspecified items. The Assessing Authority also referred, in the assessment orders, order dated 14.05.2012 of High Court of Delhi in CWP No. 9805/2009 titled as M/s Canon India Pvt. Ltd. vs. Value Added Tax Officers and others on issue of taxation on the multifunctional printers, whereby the court, without giving any specific directions about the determination of tax of multifunctional printers, directed the petitioner/ dealer to take recourse of the statutory remedies and approach to the department/ appellate authorities. Therefore, the Assessing Authority after going through the facts of the case as well as the relevant provisions of the Act decided that these multifunctional printers sold by Assessee/ objector dealer are taxable @12.5% instead of 5%. The Assessing Authority made following observations in the assessment orders:



- i. A printer can only be used with the help of CPU while the Multifunctional Printers/ Machines can be used without the use of CPU for copier, fax and phone facilities.
- ii. Generally Multifunctional Printers has functions namely printer, scanner, photocopier, fax, copier, email/ phone. Only first function i.e. printing requires the computer system and rest are not principally ancillary to the computer system and do not require a computer system and can be used without attaching to it also.
- iii. The structure of the Multifunctional Printers is too much different from the structure of the normal printer.

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- iv. The average price of Multifunctional Printers is approximately 40-75% higher than the price of printer of some configurations.
- v. The term "peripherals" has been defined in Oxford Dictionary to mean as "(of a devices) able to be attached to and used with computer, though not an integral part of it". But a Multifunctional Printer/ Device can only be a computer peripheral when it is attached with a computer. However, these printers can also be used for copier, fax and phone facility without the use of Computer. Hence, it cannot be categorized as "peripherals".
- vi. Every Multifunctional Printer having photocopier machine, fax, scanner, printing, email, phone facilities in it, and as such it is not entirely depend upon the input from a computer.



The Assessing Authority further observed that the dealer himself sold these products by the name code i.e. Multipurpose/ Multifunctional Printer/ Devices. Therefore, Multifunctional Printers sold by the dealer during the year 2010-11 cannot be considered as input or output unit under Entry 41A (Sl. No. 3) of Third Schedule of DVAT Act-2004 and therefore, the said item is treated under general category of residuary tax rate @12.5% being unclassified item and since the dealer has sold these items by charging less rate of tax i.e. 5% and therefore, the differential tax @7.5% alongwith interest @15% per annum as per Section 42(2) of DVAT Act-2004 imposed by the Assessing Authority on the local

sales of Rs.16,81,29,527/- and central sales of Rs.67,30,133/- of this item by the objector dealer during FY 2010-11.

The Assessing Authority also imposed penalty under Section 86(12) read with Section 33 of DVAT Act-2004 on accounts of tax deficiency arises on the part of the objector dealer.

In respect of FY-2012-13

- c. In respect of FY-2012-13, the Assessing Authority issued assessment orders of tax and interest under DVAT Act-2004 as detailed above created additional demand on the sale of multifunctional printers/ devises by treating the said items under general category of residuary tax rate @12.5% and since the dealer sold these items charging lesser rate of tax @5% and therefore, the differential tax alongwith interest under Section 42(2), of DVAT Act-2004 imposed by the Assessing Authority. The Assessing Authority, in the assessment orders dated 31.03.2017, held that the said items does not fall in Third Schedule of DVAT Act-2004 as it is not only a printer but also functions as scanner and photocopier also. Hence it is not covered under Entry 41A of Third Schedule of DVAT Act-2004. The Assessing Authority also referred the Determination order dated 09.03.2010 issued by Commissioner, VAT, Delhi which clearly mentions the rate of tax @12.5% on multifunctional printers. Therefore, local sales of Rs.13,71,88,878/- in FY 2012-13 is taxed @12.5% instead of @5% as done by objector dealer."



26. Learned OHA, vide impugned order, disposed of the objections filed by the dealer against the aforesaid assessments, by observing in the manner as:

“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 Financial Year 2008-09, 2010-11 & 2012-13 are 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.

The arguments/ contentions of the objector dealer challenging the imposition of interest under Section 42(2) of DVAT Act-2004 is not maintainable since the objector dealer has defaulted in making payment of tax due in accordance with the provisions of the Act and therefore, it clearly attracts imposition of interest under Section 42(2) of DVAT Act-2004.



Therefore, the impugned Assessment Orders of tax & interest issued under DVAT Act, 2004 and CST Act-1956, as detailed in above table, in respect of FY 2008-09, 2010-11 & 2012-13 by the Assessing Authority are hereby upheld and the corresponding objections are dismissed/ rejected.”

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27. As regards, the assessments in respect of assessments of tax and interest under CST Act, relating to Canon-appellant-in respect of tax period 2008-2009, learned OHA deemed it appropriate to remand back the case with direction to the Assessing Authority to verify the claim of the objector-dealer regarding payment of admitted liability, by observing in the manner as:

“During the proceedings Ld. Advocate submitted that the objector dealer has admitted the liability in respect of missing C forms of Rs.11,25,896/- and accordingly tax of Rs.50,531/- and interest of Rs.24,275/- totaling to Rs.74,806/- has been deposited by the objector dealer with the department in the year 2014 and also submitted copies of challans in the paper book. Regarding balance C forms of Rs.11,47,001/- the objector dealer submitted the information about obtaining/ receiving the said C forms and enclosed the copies of the same in the paper book. The authenticity and the veracity of these forms are required to be checked by the concerned Assessing Authority. The Assessing Authority is also required to verify the claim of objector dealer regarding payment of admitted liability.

Further, the objector dealer admitted the entire liability of tax and interest in respect of missing F forms of Rs.6,389/- and informed that the liability has been deposited with the Department in the year 2014 and challans are produced. The concerned Assessing Authority is required to verify the claim of objector dealer regarding payment of admitted liability.



Therefore, I am inclined to remand back the case to this extent only to the concerned Assessing Authority in respect of FY 2008-09 with the directions to pass appropriate orders under relevant Act as and if required within two months from the date of the order. The objector dealer shall appear before the Assessing Authority with relevant documents including Central forms as well as documentary proof of payment of demand of tax and interest on 30.01.2018 at 11.00 a.m.”

- 28 In the course of arguments, we have not been apprised of the status on remand of the matter by Learned OHA.

Levy of penalties u/s 86(12) of DVAT Act read with Section 33 of DVAT Act and Section 9(2) of CST Act, 1956

29. As regards assessments of penalties under the above said provisions, learned OHA rejected the objections on the following grounds:

“In this regard the reference has to be made to the provision of Section 86(12) of DVAT Act-2004 which says that whether a tax deficiency arises in relation to a person, the person shall be liable to pay penalty for the period of default. From the perusal of assessment orders and the facts of the case it is observed that objector dealer is liable for tax deficiency arises in the present case and therefore, I am of the considered view that the Assessing Authority has correctly imposed the penalties in accordance with the provisions of DVAT Act and CST Act. Therefore, all the impugned assessment orders of penalty issued by Assessing



Authority as detailed above are hereby upheld and the corresponding objections are dismissed/ rejected."

30. As is available from the Impugned Order passed by Ld. OHA following directions were issued by him to the dealer to furnish following information/survey/documents as below :

"The matter pertains to 2008-09, 2010-11 & 2012-13. 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 alongwith complete commercial and technical specifications of each machine with photograph as well as a certificate from the competent technical 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. VAT dated 04.05.2012."

31. Thereafter, Ld. OHA proceeded to state ~~that~~ the question :-

"The question which needs to be answered is whether the Multifunctional Printers/Devices sold by the assessee/objector dealer in the year 2008-09, 2010-11 & 2012-13 are to be classified under Third Schedule, Entry No. 41 A (Sl. No. 3) taxable @ 5% or @ 4% (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)?”

In order to decide the above question, Ld. OHA referred to the provisions of Section 4 of DVAT Act and Entry No. 41 A (Sl. No. 3) of schedule-III of DVAT Act:

“Entry No. 41 A (Sl. No. 3) of schedule-III of DVAT Act, as it was assessed there that the multi-functional print/device are covered by the said entry. In respect of this contention, the objector is relied on the decision in M/s Canon India (P) Ltd. Vs State of Tamil Nadu in Tax Case (Revision) Nos 94-96/2014, where the Hon’ble Court held that goods in question partake the character ‘peripheral’ of a computer and therefore, classified under Entry 18 (i) of Part B of Schedule of Schedule I of Tamil Nadu General Sales Tax Act and decided the matter against the revenue and in favour of assessee.”



As regards the above said decision in Canon India case (SUPRA), Ld. OHA observed that the same was not applicable to the present case, because the relevant entries incorporated in both the Act i.e. Tamil Nadu Act and Delhi VAT Act were

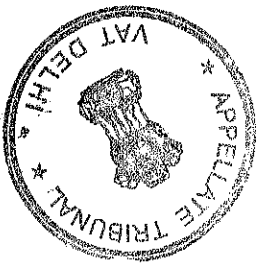
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completely different from each other, because of significant differences in the nomenclature and structure in the entries of these states. Ld. OHA then proceeded to describe in the relevant entries of each state.

While considering the contention of the objector-dealer reference to entry 14 (1) of schedule 3rd, DVAT Act 2004, and to decide whether the product "Cannon Image Runner" Multifunction Printers/Devices sold by the objector dealer falls within the scope of the said Entry No. 41 A? ~~In this regard~~, Ld. OHA relied on decision in M/s Ricoh India Ltd. Vs Commissioner, VAT, Delhi in STA No. 06/2010 .

Ld. OHA then opined as under :-

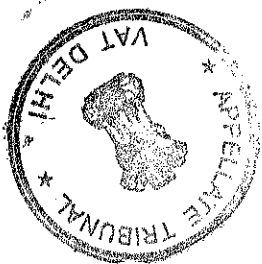
"From the above, it is amply clear that after 01.04.2007 these products i.e. Multifunctional Printers/machines would now be covered and classified under heading 8443 rather under heading 8471, therefore, keeping in view the language used in the footnotes of Entry 41 A as well as language used in the beginning of Entry 41A as well as language used in the body of Sub Entry 3 of Entry 41A, the



dealer has no case in his favour and these products are not covered in Third Schedule Entry 41A or any other schedule of DVAT Act-2004.”

32. As is available from the Impugned Order passed by Ld. OHA following directions were issued by him to the dealer to furnish following information/survey/documents:

“The matter pertains to 2008-09, 2010-11 & 2012-13. 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 alongwith complete commercial and technical specifications of each machine with photograph as well as a certificate from the competent technical 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. VAT dated 04.05.2012.”

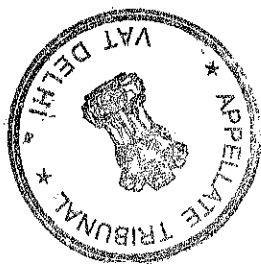


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Thereafter, Ld. OHA proceeded to observe about the following issue involved:

“The question which needs to be answered is whether the Multifunctional Printers/Devices sold by the assessee/ objector dealer in the year 2008-09, 2010-11 & 2012-13 are to be classified under Third Schedule, Entry No. 41 A (Sl. No. 3) taxable @ 5% or @ 4% (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)?”

33. In support of his contention, before learned OHA the objector relied on the decision in M/s Canon India (P) Ltd. Vs State of Tamil Nadu in Tax Case (Revision) Nos 94-96/2014, where the Hon'ble Court held that goods in question partake the character 'peripheral' of a computer and therefore, were classified under Entry 18 (i) of Part B of Schedule of Schedule I of Tamil Nadu General Sales Tax Act and decided the matter against the revenue and in favour of assessee.



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34. While dealing with the contention on behalf of the dealer-objector that the said devices are input or output units, Ld. OHA referred to the following observations made by our own Hon'ble High Court in para 19 of decision in Ricoh India's case (supra):-

"When we compare the entry input units and output units in column (2) with Entry No. 8471.10.00, we find that the description is not identical. Words used in the notification are "input unit, (or) output unit". The word used in entry No. 8471.10.00 are input or output units, whether or not contain storage units in the same housing. There is no reference to or requirement of storage unit in column 2 of the notification. Multi functional machine it is stated can act as both an input unit and as an output unit. It combines both functions. Reference was made to Entry 8471.60, wherein words "combined input or output units" is used, but the same is a heading. This is clear as no rate of duty is prescribed / stipulated against the said heading. Rate of duty is prescribed against each sub - heading. Thereafter, sub - headings read, printer, line printer, dot matrix



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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 alongwith this appeal. In the said bills of entry, machines have been cleared under tariff entry 8471.60.29 i.e. others."

Ld. OHA concluded that in view of the language in note (2) and note (4) at the bottom of Entry 41 A the objector/dealer had no case in its favour. Accordingly, the Ld. OHA rejected the objections even on this ground.

35. While considering the contention raised on behalf of the Dealer-Objector on this point, Ld. OHA referred to Para 21 & Para 22 of the judgment in Ricoh's Case (supra). He went on to observe that for deciding the issue on Dominant Intention Test, it is well settled that the same has to be evaluated with reference to the purpose and objective of a buyer/customer i.e. when a customer goes to market to buy a product, with what intention he purchases a product?



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On this point, while referring to the sample brochures for various multifunctional printers such as model No.; 4051/4035/ 4025, 2545/2535 /2530/2525/2520, C2020/C2020H/C2025H. Ld. OHA observed in the manner as :-

“From the analysis of technical, commercial aspects and other details of the multifunctional printers/devices submitted by the objector dealer alongwith objection petitions, it is observed that a printer can only be used by attaching the same with the computer system there means printer works with the used by attaching the same with the computer system there means printer works with the help of CPU while the multifunctional printers/devices can be used as standalone machine without attaching he same with the computer system/CPU for various purposes such as photocopying, fax, phone, scan etc., therefore, “is only one of the function/use of multifunctional device. If a customer requires a machine for printing purpose only, he will purchase “printer” and not the multifunctional printers/machine which is much costlier than the price of normal printer because a customer always give utmost importance to the financial implications while making any purchase for his defined purpose. A customer would like to purchase multifunctional device/printer if he is in need of photocopying facility primarily besides other ancillary services. The other functions available on the multifunctional printers/devices such as printing, scanning, fax, phone, email etc. has to be seen as additional functions and cannot be replaced with the main function i.e. photocopying. From the perusal of sample tax invoices issued



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by objector dealer in the relevant years (submitted with objections petitions) it is clearly observed that these multifunctional printers/devices are sold for very high prices such as Rs. 4,60,000/- per unit for model IR-5055 high end printer, Rs.2,90,928/- per unit for model IR-ADV4045 with DADF and Toner IR mid end printer, Rs. 1,89,900/- per unit for model IR Adv. 4025 printer, Rs. 1,77,840/- per unit for model Canon IR 2535, Rs. 2,00,000/- per unit for model Canon IR 2530, Rs. 2,88,192/- for model Canon IR Adv.C2025H etc. Whereas the normal printers are sold in the open market generally at the price of Rs. 5,000/- to Rs. 10,000/- per unit. Therefore, it can be safely concluded that these multifunctional printers/devices cannot be replacement of normal printers, since the dominant/principal purpose of multifunctional devices are not printing but these are generally used for photocopying by the customers. Further, from the perusal and analysis the sample brochures of multifunctional printers/devices submitted by the objector dealer alongwith objection petitions, it is also observed that even the objector dealer has not depicted these machines as "printers" in the brochures. These machines have been shown as "image runner" and "image runner advance". The pictures of machines on the brochures itself shown that these heavy machines are not similar to the normal printers. It has very different technical specifications as compared to the normal printers. The multifunctional printers/devices has various additional and advanced features and functions which are not available in the normal printers such as cloud computing, data media store, advance storage etc. The brochures of "image runner advance" is required



to be referred to which has shown technical characterises, capabilities and the qualities of these machines which is reproduced below:

“The image Runner Advance 4000 Series is designed to simplify your document communication. Whether it is black and white print or full colour scanning, you can rely on its trademark Canon efficiency.”

Behind this simplicity is a whole range of innovative technologies. From seamless integration with you infrastructure to the new world of cloud computing, the image Runner Advance 4000 Series brings you advanced productivity in a single multifunctional device.

Cloud computing is gaining acceptance with more and more companies across the globe. Businesses today look to cloud computing for an demand scalability. Costly infrastructure, setups and administrative burden are a thing of the past with proper implementation of Cloud Computing technology.

Canon's image Runner Advance maximizes office productivity by allowing users to acess Cloud services right from image Runner Advance devices. Users can scan and store their paper documents, or choose to retrieve and print their documents stored in their Cloud service.

Scan-to-Cloud and print-from-Cloud is simple with Canon's image Runner Advance - all that is needed is an image



Runner Advance multifunctional device (MFD); no drivers, additional software or personal computers are required. With the Cloud Scan and Cloud Print support of GoogleTM Docs and MicrosoftTM SharePoint Online, image Runner Advance systems are the perfect way to scan and print through Cloud services.”

36. In view of the above, learned OHA concluded as under :

“Therefore, after the aforesaid analysis, it can be safely concluded that these machines are not the digital data processing machines comprising a central processing unit (CPU), nor input unit or output unit. Basically these multifunctional printers/machines consists of various functionalities such as photocopying, printing, fax, scan, email, phone etc. These machines are generally used as standalone machines for all the functions expect printing for which its attachment with the computer system is required. These machines are mainly an evaluation of digital photocopiers, which is the dominant/principle use of the machine with ancillary uses like scanning, fax, printing etc. Therefore, these machines cannot be treated as input or output unit of automatic data processing machine and therefore, fails to qualify under entry 41A of Third schedule DVAT Act, 2004.”



Appeal Nos. 140-165/ATVAT/14,

37. Present set of appeal pertains to **tax period 2009-10**. As per case of the Appellant, it is engaged in the business of import and

sale of multifunctional printers, their parts and cartridge, fax machine and its parts, scanner and its parts, digital cameras and parts, DV camcorder and parts, SLR and parts, copier parts and cartridge, projector and parts. Notices of default assessment of tax and interest u/s 32 and imposition of penalty 33, 9(2) of Central Sales Tax Act, were issued by the Assessing Authority – VATO, vide orders dated 27/5/2009, 9/6/2009, 18/6/2009, 19/6/2009 and 22/6/2009.

While framing assessments, Assessing Authority is said to have taken into consideration determination order dated 13/12/2007 passed by the Commissioner, Trade & Taxes, in the case of Ricoh India's Ltd's case.

The dealer challenged the notices of default assessment of tax, interest and notice of levy of penalty before learned Objection Hearing Authority (here-in-after referred to as learned OHA) by way of objections u/s 74 of Delhi Value Added Tax Act, 2004 (here-in-after referred to as the Act).

Learned OHA, vide order dated 13/6/2014, disposed of the objections, by observing in the manner as :-

“In view of the submissions made by the learned CA for the objector, I am of the considered opinion that the evidence furnished by the objector does not stand up and so far as rate of tax on



multifunctional printer is concerned, it is indeed not covered under entry 41A (serial No. 3 of 3rd scheduled) category, hence the item are under general category of residuary tax rate @ 12.5% under the DVAT Act. Hence, demand created by learned AA is upheld so far as missing C forms are concerned. VATO may check genuineness of F and pass afresh order accordingly.”

Appeal No. 160/ATVAT/19-20

38. Appellant has challenged order dated 11/3/2020 passed by Learned Objection Hearing Authority (here-in-after referred to as learned OHA).

Appellant is feeling aggrieved by assessment of VAT @ 12.5% in place of @ 5% as regards, goods named as multifunctional printers.

The Assessing Authority, while making assessment, had observed that the machines could not be treated as input or output unit of automatic data processing machines and as such the same failed to qualify the essentials of Entry 41 A of schedule-III of Delhi Value Added Tax Act, 2004 (here-in-after referred to as the Act). Accordingly, local sale of multifunctional printers worth Rs. 14,77,18,804/- was assessed / charged at 12.5% and demand of differential VAT @ 7.5% was created with interest.



The appellant filed objections before Id. OHA against assessment made on 26/3/2018 by the Assessing Authority.

Ld. OHA, vide impugned order, rejected the objections and upheld the assessment of tax and interest made by the Assessing Authority.

Appeal Nos. 498-545/ATVAT/13

39. Present set of appeal pertains to **tax periods 2005-06 and 2008-09**. Appellant is engaged in the business of import and sale of multifunctional printers, their parts and cartridge, fax machine and its parts, scanner and its parts, digital cameras and parts, DV camcorder and parts, SLR and parts, copier parts and cartridge, projector and parts. Notices of default assessment of tax and interest u/s 32 and notice of assessment of penalty u/s 33 of DVAT Act, were issued by the Assessing Authority – VATO, vide orders dated 7/2/2014 and 13/2/2014.

While framing assessments, Assessing Authority took into consideration determination order dated 13/12/2007 in the case of Ricoh India Ltd's. case (supra).

The dealer challenged the notices of default assessment of tax and interest, and notice of levy of penalty before learned Objection Hearing Authority (here-in-after referred to as learned



OHA) by way of objections u/s 74 of Delhi Value Added Tax Act, 2004 (here-in-after referred to as the Act).

Learned OHA, vide order dated 17/6/2013, disposed of the objections.

Appeal No. : 64/ATVAT/2018;

M/s. Konica Minolta Business Solution India Pvt. Ltd.

Present appeal has been filed by the dealer-assessee having TIN No. 07060408324. The appeal pertains to tax period Annual (2012-13).

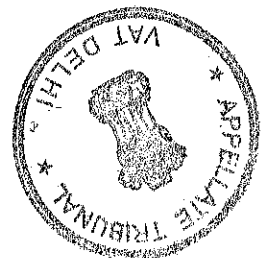
Dealer-assessee is feeling aggrieved by the rejection of its objections filed u/s 74 of DVAT Act before Objection Hearing Authority – Additional Commissioner, vide order dated 18/01/2018.

The objections were filed challenging default assessment of tax and interest dated 29/03/2017, framed by the Assessing Authority u/s 32 of DVAT Act, whereby demand of tax of Rs. 2,40,89,538/- and interest of Rs. 1,78,39,458/-, totalling to Rs. 4,19,28,996/-, was raised, u/s 32 of DVAT Act.

The notice of default assessment of tax and interest was issued by the Assessing Authority due to the following reason:

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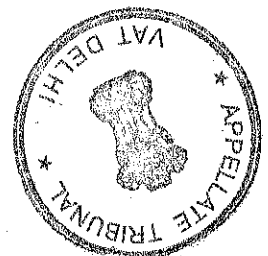


"It is noticed that the dealer is making local sales of Multi-functional Printer by charging VAT @5% whereas this item do not fall in schedule III of DVAT Act 2004. The item (Multi-functional Printer) is not a simple printer as mentioned in Entry No. 41A of schedule-III. It is not only a printer but it also function as a scanner & a photocopier also. Hence, it is not covered by Entry No. 41A. Further determination order no. 250/CDVAT/2009/20 dated 09/03/2010 has clearly mentioned the rate of VAT @12.5% on Multi-functional Printer. Hence, the local sales of Multi-functional Printer of Rs. 33,22,98,594/- is charged @ 12.5% instead @5% as done by dealer. The demand of differential VAT @7.5% is created along with interest."

While disposing of the objections, learned OHA observed in the manner as:

"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 Financial Year 2012-13 are 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.

The arguments/ contentions of the objector dealer challenging the imposition of interest under Section 42 (2) of DVAT Act-2004 is



not maintainable since the objector dealer has defaulted in making payment of tax due in accordance with the provisions of the Act and therefore, it clearly attracts imposition of interest under Section 42(2) of DVAT Act-2004.

Therefore, the impugned Assessment Order of tax & interest issued under DVAT Act, 2004 on dated 29.03.2017 in respect of FY 2012-13 by the Assessing Authority is hereby upheld and the corresponding objection is dismissed/ rejected."

It may be mentioned here that as is available from the assessments made by Assessing Authority, no document was submitted before him by the dealer. However, as is available from the order passed by learned OHA, some documents were submitted by the dealer before him.

40. Arguments heard. File perused.

Discussion

41. These matters involve an interesting issue and that is as to whether the product(s) sold by the appellant is ^{or are} ~~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 or are 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 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)	
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Note-(1) The Rules for the interpretation of the provisions of the Central Excise Tariff Act, 1985 read with the Explanatory Notes as updated from time to time published by the Customs Cooperation Council, Brussels apply for the interpretation of this entry and the entry number 84 of this Schedule.

Note.-(2) Where any commodities are described against any heading or, as the case may be, sub- heading, and the description in this entry and in entry 84 is different in any manner from the corresponding description in the Central Excise Tariff Act, 1985, then, only those commodities described in this entry and in the entry number 84 will be covered by the scope of this notification and other commodities though covered by the corresponding

description in the Central Excise Tariff will not be covered by the scope of this notification.

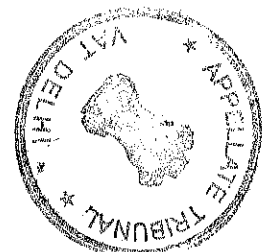
Note.-(3) Subject to Note (2), for the purposes of any entry contained in this notification, where the description against any heading or, as the case may be, sub-heading, matches fully with the corresponding description in the Central Excise Tariff, then all the commodities covered for the purpose of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

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

Notably, w.e.f. 10.5.2016 onwards, this entry was again amended. Serial No.3 of this entry reads as under:

"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.

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.”

Tax period 1.4.2005 to 29.11.2005

42. Here, the dispute pertains to rate of tax for the tax periods ~~Tax period~~ 1.4.2005 to 29.11.2005

First of all, as per sequence, we take up the controversy in respect of application of entry 41A(Sr.No.3) of Sch.III, as in force w.e.f. 1.4.2005 to 29.11.2005. As noticed above, during this period, the entry contained “computer systems and peripherals, electronic diaries” at serial No. (xxiii).

As to what is a Computer peripheral

As regards computing, word “peripheral” has not been defined under DVAT Act. As per Oxford Dictionary, it means” (of a device) able to be attached to and used with computer, though not an integral part of it.



For example, printer is a computer peripheral being a device able to be attached to and used with computer, even though not an integral part of it.

Is there any precedent as regards entry No. 41A.

This entry was subject matter of discussion before our own Hon'ble High Court in Ricoh (India)'s case, also a case of multi-functional machine/device.

Hon'ble High Court observed that the multi-functional machines or printers can be termed as computer peripheral if principal or sole purpose is to be attached and function as a computer ancillary.

Here, Revenue has not disputed the claim of the dealer that the multi-functional machine or device can be attached to and used with computer.

In view of the decision in Ricoh India's case, it is held that during the period from 1.4.2005 to 29.11.2005, multifunction machine or device which could be attached and used with the computer, was exigible to tax at the rate prescribed, for the said period, it being an item covered by entry 41A (xxiii) of Schedule III of DVAT Act, 2004.

Result

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Result

43. As a result, while deciding this issue raised in these appeals, we direct that as regards turnover of the period from 1.4.2005 to 29.11.2005 concerning peripheral-Multifunction machine or device, the Revenue creates demand of tax at the rate not higher than the one prescribed for computer peripherals of the dealer-appellant. The impugned demand, if at a higher rate or not in consonance with the rate prescribed for such item covered by entry No.41 Sr.No. (xxiii) deserves to be set aside. Same is hereby set aside. Revenue to do the needful for calculations afresh, as per this decision.

Entry No.41A of Schedule III of DVAT Act-w.e.f.30.11.2005

44. As noticed above, amendment was made in entry No.41A w.e.f.30.11.2005.

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

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

“In the case of any other goods,

at the rate of twelve and a half paise in the rupee.”



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

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

~~Q12~~ 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.

General Rules for interpretation of First Schedule of Central Excise Tariff

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At this stage, reference may be made to Additional Notes available in First Schedule of Excise Tariff, which pertains to general rules for the interpretation of this Schedule First. It reads as under:

- “(1)a. “heading”, in respect of goods, means a description in list of tariff provisions accompanied by a four-digit number and includes all sub-headings of tariff items the first four-digits of which correspond to that number;
- b. “sub-heading”, in respect of goods, means a description in the list of tariff provisions accompanied by a six-digit number and includes all tariff items the first six-digits of which correspond to that number;
- c. “tariff item” means a description of goods in the list of tariff provisions accompanying either eight-digit number and the rate of the duty of excise or eight-digit number with blank in the column of the rate of duty;
- (2) the list of tariff provisions is divided into Sections, Chapters and Sub-Chapters;
- (3) in column (3), the standard unit of quantity is specified for each tariff item to facilitate the collection, comparison and analysis of trade statistics.”

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 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.

On the other hand, 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 in this regard. But 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 comparison of the contents of the entries would have become easier.

45. 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 Organization. This volume contains relevant section XVI; this section contains the relevant chapter 84; and chapter 84 contains the relevant entry 84.

As per provisions of Chapter 84 of Central Excise Tariff, for the purposes of heading 8471, the expression "automatic data processing machines" means:

(a) Digital machines, capable of

1. Storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;
2. being freely programmed in accordance with the requirements of the user;



3. performing arithmetical computations by the user; and
4. executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run;

(b) Analogue machines capable of simulating mathematical models and comprising at least:

analogue machine with digital elements.

(c) Hybrid machines consisting of either a digital machine with analogue elements or any analogue machine with digital elements.

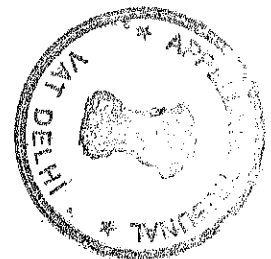
(B) Automatic data processing machines may be in the form of systems consisting of a variable number of separate units.

Subject to paragraph (E) below, a unit is to be regarded as being a part of the complete system if it meets all the following conditions.

(a) it is of a kind solely or principally used in an automatic data processing system;

Handwritten signature/initials.

Handwritten signature/initials.



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

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

As per Note 5 (C), 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.

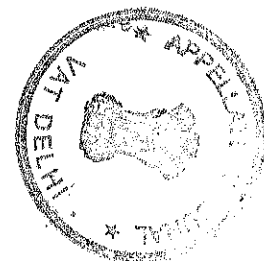
Condition as stipulated in paragraphs (B)(b) of Note 5 reads as under:

“(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 :



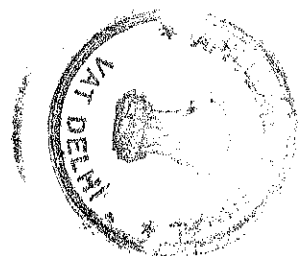
“Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the heading appropriate to their respective functions ~~for~~, failing that, in residual heading.”

Claim of the Dealer

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

- (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.

46. It was argued on behalf of the appellant, that the product is an ADPM. At the same time, it was argued that the product falls in expression “Digital processing units other than those of subheadings 8471 41 or 8471 49, whether or not containing in

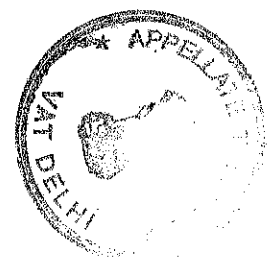


the same housing one or two of the types of units namely, storage units, input units, output units.”

47. In support of his contention, Learned counsel for the dealer – appellant referred to decision in **M/s. Xerox India Ltd. v. Commissioner of Customs, Mumbai**, (2010) 14 SCC 430, and then submitted that said decision in M/s. Xerox India Ltd. has been recently followed by Hon’ble High Court of Judicature at Allahabad, while delivering judgment in **M/s. Prarthana Infinite Lucknow Thru. Prop. V. Commissioner Commercial Taxes U.P. Lucknow**, 2022-VIL-228-ALH.
48. In M/s. Prarthana Infinite Lucknow case (supra), Hon’ble High Court has held that the petitioner is an authorized dealer of a printer manufacturer by the name of Sharp Computer Systems, and although their printers are multifunctional in nature their components are mainly used for the purpose of printing and their main character is that of a printer.

Claim of the Revenue

49. 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.



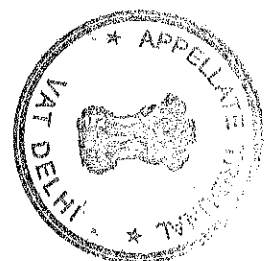
Determination of question under section 84 of DVAT Act-Its binding effect.

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.

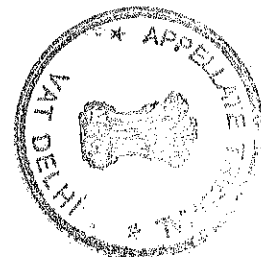
Learned Counsel has further submitted that decision in Ricoh India's case (Supra) was followed by our own Hon'ble High



Court in Cannon India Pvt. Ltd.'s case, 2012, SCC Online Delhi 2600.

50. Undisputedly, determination order was passed by Learned Commissioner and Ricoh India-who had raised the question for determination-challenged the determination order firstly before the Appellate Tribunal and then challenged the decision by the Appellate Tribunal by filing appeal before our own Hon'ble High Court.
51. As rightly submitted on behalf of the Revenue, in Ricoh India's case, Hon'ble High Court observed that the declaration/statement ignored the controversy "whether the product(s) of the appellant, i.e. Ricoh India Ltd, were in fact 'Multifunction printers', which fall within the aforesaid HSN Code.

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.



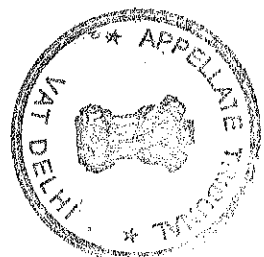
52. As pointed out by counsel for the Revenue, another aspect raised before the Hon'ble High Court, in Ricoh India's case, was as to whether and to what extent the HSN Code was applicable as far as entry No. 41 A of 3rd Schedule of DVAT Act is concerned.

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 fulfils 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.

53. It is pertinent to mention here that while arguing above cited Xerox case before Hon'ble Apex Court, the learned counsel representing the appellant here too, had put forth one of the submissions as regards multifunctional in the manner as :

"while the multifunctional machines (which includes printer, scanner and copier) are not automatic data-processing machines



(ADPM), they serve as input and output devices of an ADPM (computer) and thus they fell under sub-heading 8471.60 (of Customs Tariff Act)."

As that was also a case pertaining to multi functional device to seek clarity in the stand, we drew attention of learned counsel to the aforesaid submission put forth by him before the Hon'ble Apex Court. Thereupon, learned counsel pondered over for a short while, then admitted having put forth above said submission there, and ultimately submitted that that was a case of Xerox, and that the argument was raised as counsel for Xerox, but it was given up, and as such no decision was given on this point.

On perusal of the decision, we do not find that the aforesaid submission was given up.

Be that as it may, in Xerox's case (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.

We do not find any material on record to suggest that Multifunction machine or device fall 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,

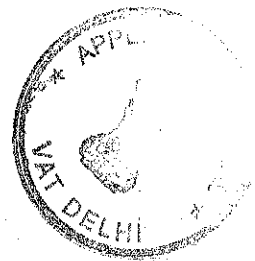
personal computer,

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."



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54. Next item to be dealt with is "Other, presented in the form of systems" (Central Excise Tariff 8471 49 00) and as "Computer presented in form of systems" (entry 41A of DVAT Act).

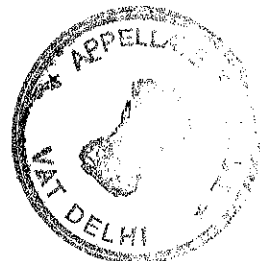
As per Central Excise Tariff, "*Other, presented in the form of systems*", i.e. consisting of a variable number of separate units may also be termed as Automatic data processing machine. But, as per Sr. No.3 of entry No.41A of Sch.III, the item reads differently as "*Computer presented in form of systems*".

It is not the case of the dealer-appellant that ~~its~~^{its} any product is a "computer presented in form of systems" as available in entry 41A of DVAT. It is also not case of the dealer that ~~its~~^{any of} any product falls in tariff item 8471 49 00 "Other, presented in the form of systems" as available in Central Excise Tariff.

Undisputedly, a unit, to be regarded as being a part of a complete digital data processing system, is to satisfy the three conditions:

"(a) it is of a kind solely or principally used in an automatic data processing system;

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



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

These may be in the form of units :

(a) *having a separate housing* and designed to be connected to other machines on a system; or

(b) *not having a separate housing* and designed to be inserted into a machine.

Here, 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 without a CPU, in case of a digital processing machine. So, it is not covered even by this category-item 8471 49 00.

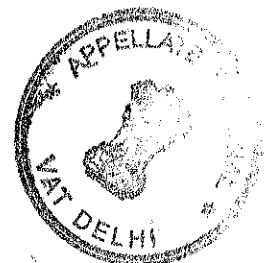
55. In view of what has been said above, we find that the product of the dealer does not fall in tariff item 8471 10 00 or sub-heading 8471 30 or 8471 41 or in any of the tariff items falling in between or in any of the tariff items upto 8471 49 00 falling under each of said two sub headings of Central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

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

Sub-heading 8471 50 00 reads as under:

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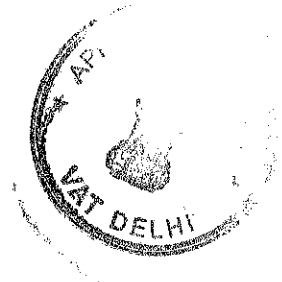


“Digital processing units other than those of subheadings 8471 41 or 8471 49, whether or not containing in the same housing one or two of the following types of unit :

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^s, but fall under the residual - 8471.60.29 i.e. “others”. Learned counsel for the Revenue has further submitted that in this regard, Hon'ble High Court also took note of the bill

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of entry filed by Cannon India Pvt. Limited petitioner in another writ petition, wherein the machines were shown to have been cleared under tariff entry 8471.60.29 i.e. "others".

While referring to this observation, Learned Counsel for the Revenue has contended that different stand has been taken by the parties as regards the sub-heading of entry 8471, by which the product(s) are covered, and that these different stands adversely affects the case of the dealer / appellant.

56. In this regard, suffice it to record that while dealing with this set of appeals, we are to adjudicate keeping in view the claim of the parties litigating here, and not the claim of any third party in the other set of appeals.

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".

As per case of appellants from the very beginning their products are 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 .

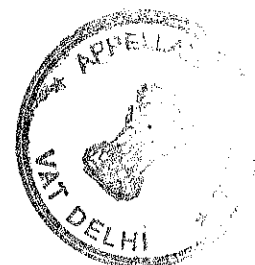
When description of this tariff item 8471 50 00 does not match fully with the description of goods as available in column (2) of entry 41A, *from the point of Central Excise Tariff*, in view of Note (2) appended to the notification, the tariff item 8471 50 00 "*Digital processing units(other than those 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.

On the other hand, when we peruse *the commodities mentioned in column (2), Sr.No.3 of entry 41A of Schedule III*, applying what is contained in Note (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.

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.

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57. As noticed above, the product of the appellant being constituent of input and output units, ^{it} ~~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.

When we see it from other angle, i.e. considering the commodities mentioned in column (2), Sr.No.3 of entry 41A, the



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multifunction product being “input units” and “output units”, is covered by the notification. In view of note (2) of the notification, under DVAT Act, even though having description as an individual item, 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 ^{mention} under the heading of Entry No. 41A (S. No. 3), it is found that word "laser jet printer" finds mention as tariff item 8471 60 26 as available under heading 8471 of First Schedule of Central Excise Tariff.

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*

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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.

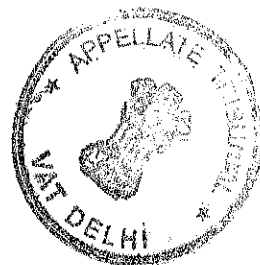
This comparison would reveal difference as regards these tariff items available under Schedule Third of DVAT Act and the tariff items as placed in the heading 8471, its sub-heading and the tariff items of the Central Excise Tariff.

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.

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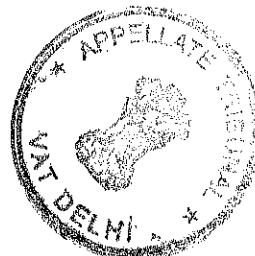
What about Laser Jet Printer appearing as tariff item 8471 60 26 in Central Excise Tariff and also in column (2) of entry 41A under DVAT Act?

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

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

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

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



can safely be held to be covered by Column No. (2) of Sr. No. 3 of Entry 41A, even as individual output unit.

The result is that Laser Jet Printer, even as single ^{out put} ~~input~~ unit is covered by Entry 41 A(Sr.No.3).

Appellant alleges certain errors in Ricoh India Ltd., case

59. Learned counsel for the appellant has submitted that following observations made by Hon'ble High Court in Ricoh's case (of Delhi) are not in consonance with the decision of Hon'ble Supreme Court in Xerox's case (2010) and entry No. 8471 of Central Excise Tarrif, and that he is making this submission in view of the permission granted by Hon'ble Apex Court in Xerox's case (2010).

“Multi functional machine it is stated can act as both an input unit and as an output unit. It combines both functions. Reference was made to Entry 8471.60, wherein words "combined input or output units" is used, but the same is a heading. This is clear as no rate of duty is prescribed/ stipulated against the said heading.”

Learned counsel points out that 8471.60 is not a heading of Central Excise Tariff, and that actually 8471.60 is a sub-heading and rate of tax finds mentioned against it.



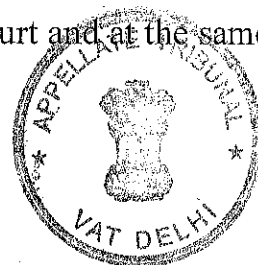
Ordinarily, this Appellate Tribunal would not have allowed counsel for the appellant to make this submission. But learned counsel for the appellant has drawn attention to order dated 25/02/2014 passed by Hon'ble Apex Court in Petition(s) for Special Leave to Appeal (Civil) No(s). 18637/2012 filed by M/s Canon India Pvt. Ltd., to so urge on the strength of the said observations made in said order dated 25.2.2014.

The observations are reproduced for ready reference:

“Upon hearing the learned counsel and upon perusal of the impugned judgment delivered by the High Court, we find that by virtue of impugned judgment, the High Court has remanded the matter to the Commissioner, Department of Trade and Taxes and in pursuance to the said remand order, the Commissioner has already decided the matter and the matter is pending before the Tribunal at present.

In view of the above fact, we do not see any reason to entertain this appeal. The appeal is dismissed with an observation that it would be open to the parties to make their submissions on law as well as on facts before the Tribunal so that the matter can be decided afresh in accordance with law.

Needless to say that it would be open to the learned counsel for the appellant to submit that some of the observations made by the High Court are contrary to the decision of this Court and at the same time



it would also be open to the learned counsel for the respondent to submit that the observations made by the High Court are correct. The Tribunal shall decide the case after hearing the concerned advocates in accordance with law."

Suffice it to mention that Learned counsel for the appellant has rightly submitted that 8471.60 is not a heading of Central Excise Tariff. Rather, 8471.60 is a sub-heading and rate of tax finds mentioned against it. Similarly, 8471.60 10 is a tariff item corresponding to words "Combined input or output units."

In Ricoh's case (Delhi), Hon'ble High Court further observed that 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' and that "Others" fall under the sub-heading 8471.60.29; that 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". Learned counsel for the appellant has submitted that these observations are not in consonance with what stands recorded in Central Excise Tariff.

On having been taken through the Central Excise Tariff, we find that all the above items are tariff items from 8471 60 21 to 27. In



this regard, suffice it to say that actually, as per Central Excise Tariff, 8471.60.29 is also a tariff item and not a sub-heading.

As per Note 5(D) of Chapter 84, printers and other items mentioned in this note are in all cases to be classified as units of heading 8471, subject to the condition that the same satisfy conditions of paragraphs (B)(b) and (B)(c) of Note 5(B). When we advert to the decision of Hon'ble Supreme Court in Xerox's case (of 2010), it stands recorded therein that based on the nature of the functions the multifunctional device-subject of that case-performed, same served as input and output devices and separately presented units of an ADPM to be classified in heading 8471.

Here, keeping in view the nature of the functions of MFD serving as input and output units, each fulfilling conditions of paragraphs 5(B)(b) and 5(B)(c), even though separately presented, is to be classified in heading 8471 and with all humbleness and respect, not covered by tariff item 8471.60.29, i.e. "others".



60. In Para 21 of Ricoh's case, Hon'ble High Court observed:

"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

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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."

From the above observations, it is obvious that Hon'ble High Court was of the view that duplicator or a photocopying machine would not fall in the ambit of an input or output unit of ADPM, when incidentally used as a printer or a scanner. These observations can be said to have been made having regard to the predominant function of the machine which consists of printer, scanner and photocopier.

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

61. On behalf of ^{the} 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.

Ld. Counsel for the appellant has referred to the following observations made by ^{Ld.} Objection Heading Authority, and contended that same cannot stand, in view of the decision by Hon'ble Apex Court, in Xerox's India Ltd.'s case reported as (2010) 14 SCC 430. *observations made by Ld. OHA read as:*



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"In order to proceed further in the matter the doctrine of predominant function has been applied for resolving the issue. During these proceedings the Counsel for objector have filed a technical report from the Director Printing Systems (Prtg. & Pers. Systems), which tends to reiterate the contention that MF devices are basically printers. The objector has filed the breakdown of cost components for various parts used in these devices.

The data submitted for Laser Jet Printers and Deskjet printers shows that on an average the percentage cost of components can be broken up as per details given in the table below:

Item	Engine	Cart-ridges	Control Panel	Scanner Assembly	Auto Document Feeder	Fax	LLM/Pack	Total
Laserjet Printers	52%	21%	4%	12%	6%	-----	-----	95%
DeskJet Printers	67%		10%	17%	-----	2%	4%	100%

Analysis of this information however goes to show that the predominant component in these machines is the engine which would inevitably guide and control the various functions of the machine.

The percentage of cartridges is as low as 21% for Laser Jet Printers and it is not spelt out clearly for Desk Jet Printers but jumbled up with Engine component.



The information as provided does not help to establish the predominant character of the device as printer.

Moreover cartridges are consumable and therefore cannot be treated as parts embedded in the device.

It is also not understandable as to why the data for Desk jet printers is jumbled up.

The information relating to percentage investment on Engine in fact indicates that the devices have independent source of process control, which could facilitate functioning even without being connected to a data processing unit.

It would have been helpful if the objector had acted in accordance with the observations of the Hon'ble High Court and instead of giving the sketchy technical details made sincere efforts provide a clear picture by disclosing exact operational details of each part for verification of information and assisting in the investigations. It is noted that in addition to the cost of parts related to a particular process objector ought to have provided reasonable nexus to the utilization of the particular part in the functional output of the machine.

It is easily understood that data in this format cannot have bearing on the issue under examination. Percentage cost of parts embedded in any machinery may be high or low but their relationship with functions performed may vary from case to case or in fact from user to user depending on the nature of functioning of the user organization.

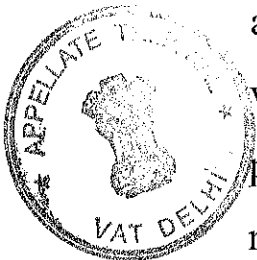
Like a human body any machine also performs on the combined efficiency of all components. Absence of any small part can render the machine unfit for performance. Similarly the nature of use of machinery may vary for different users. Therefore not much guidance could be extracted by meager statistical compilation of this nature and the test as per doctrine laid down by the Hon'ble High Court could not be applied for analysis of data furnished by the objector."

Learned counsel for the dealer submitted that there is difference between 'function' and 'purpose' of a machine.

For the purpose of classification of a product, firstly, we have to refer to relevant section notes and relevant chapter notes.

Note 7 available in Chapter 84 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.

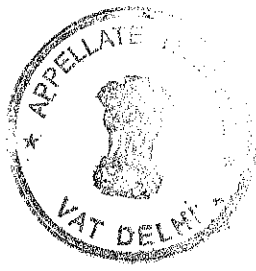


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It is to be seen as to whether the machine of the dealer has any principal purpose, as claimed by the dealer, or it is a machine where no one purpose is the principal purpose, as claimed by the Revenue.

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

62. One of the documents referred to by learned counsel for the appellant is copy of European Community – Binding Tariff information. Same is reproduced as under for ready reference :

1. Qualified Directorate General Customs & Indirect Taxes Authority (Address)	2. BTI – Reference NLRTD 2009-003112
5. Important Notice Subject to the provisions of Article 12 paragraphs 4 and 5 of Regulation EEG No. 2913/92 of the council being bound by the BTI, it shall remain in force for a period of 6 years from the date of validity. For the purpose of regulation EEG on 2454/93 of the Committee the information provided will be included in the database of working committee of the European Committee data in the BTI including where appropriate, photo(s), drawing(s), etc. with the exception of the information in sections 3 and 8 over the internet can be disclosed to the public owner may appeal against this order of BTI.	6. classification of goods in customs nomenclature 847141.00
7. Description of the Goods : A multifunction device in a housing of synthetic material which consists of the following components : Central processing unit	



<p>A hard disk 80 GB</p> <p>An internal memory of 1.4GB</p> <p>Programmable Motherboard</p> <p>scanner</p> <p>printer</p> <p>The device is capable of functioning by itself as well as within a network.</p> <p>Automatic data processing</p> <p>Single or double sided scanning and faxing</p> <p>Single or double side printing</p> <p>Single or double side scanning</p> <p>Stapling paper</p> <p>Copy/print resolution 600x600 dpi.</p> <p>Dimension : 955x650x1140 mm</p> <p>The device meets the conditions specified in note 5 A t/m C and E of Chapter 84.</p>
<p>8. Trade names and additional information</p> <p>Work Centre 5665/5675/5687</p> <p>Configuration : Copier / Printer</p>
<p>9. Justification for classification of goods.</p> <p>Classification is made by applying Rule 1 and 6 Note 3 to section XVI of the wording of GN codes 8471, 8471 41 and 8471 41 00 as well as applications of the judgment of Court of Justice in C-362/07 (KIP judgment) especially the explanation in paragraphs 35 and 42 which related to the fact that printing and scanning and automatic data processing must be considered with the application of Note 5 to chapter 84 and the characteristic function of the complex determined by the automatic data processing machine (automatic data processing machine, printer, scanner).</p>

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Here, the dealers – HP and Ingram India Micro Pvt. Ltd. made available, copy of brochure of product, describing manufacturing cost allocated to printing.

As per the 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.

Reference has also been made to specification of multi functional printers, as submitted by the Director – Printing Systems of the dealer – appellant, to the Assessing Authority.

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As per this document, following are the specifications of the MFPs :-

“We wish to inform you that Hewlett Packard's Multi-Function Printers are devices that combine printers and scanners in a single unit. The device in question is in-built with various network ports such as Ethernet, USB etc. to allow connectivity to automatic data processing machines or the IP network.

The device is configured as Laser printer / Desk Jet printer and performs printing functions as per the command sent from connected automatic data processing machine.

Apart from the printing function, the device also has a scanning function which allows the document to be scanned. The scanned documents are stored in one of many computer readable formats such as JPEG, PDF etc.

The document can also be printed upon scanning and the combination of the two function printing and scanning results in the copying function.

The principal function of the device is the printing function. This is reflected in the value of parts/components that relate to the printing function. The break-down of the value of parts/components present in the device is provided in Annexure.

With the details given in Annexure, the device clearly is printer with other functionalities. These device are increasingly being used in office environment to combine additional functionalities such as



scanning, facsimile etc. with the principal printing function as these bring down the overall total cost of ownership.

Our customers include various Government Departments, Public Sector Companies, Corporate Sector, universities etc. The customers procure these device for use with their automatic data processing machine or network.

Therefore the devise is essentially printer with additional features and qualify as computer peripheral /input output devise.”

With the said documents submitted by dealer-HP giving the specification of MFPs, is an Annexure pertaining to the breakdown of value of parts and components of laser jet printers.

This annexure reads as under:-

Sl.	Printer Name	Engine	Cartridge s	Scanner Assembl y	Auto Documen t Feeder	Control Panel	Total
1	HP CLJ Pro 100 M175a MFP	45%	32%	9%	5%	3%	94%
2	HP CLJ Pro 100 M175nw MFP	48%	31%	8%	5%	3%	95%
3	HP CLI CM1415fn MFP	48%	23%	17%	6%	0%	94%
4	HP CLJ CM1415fnw MFP	52%	23%	16%	5%	0%	96%

5	HP LJ Pro M1536dnf MFP	57%	14%	11%	8%	4%	94%
6	HP LJ M2727nf MFP	59%	14%	16%	0%	4%	93%
7	HP LJ M1005 MFP India Printer	47%	30%	15%	0%	3%	95%
8	HP LJ M1216nfh MFP	58%	14%	11%	7%	4%	94%
9	HP LJ M1213nf MFP	57%	15%	12%	8%	4%	96%
10	HP LJ M1136 MFP	58%	19%	15%	0%	3%	95%
11	HP LJ Pro 400 M425dn MFP	49%	18%	9%	12%	8%	96%
12	HP LJ Pro 400 M425dw MFP	49%	18%	9%	12%	7%	95%
	Average Cost	52%	21%	12%	6%	4%	95%

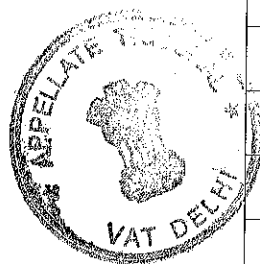
63. Dealer - Canon India Ltd. produced before this Appellate Tribunal certain documents including the following one –

Copy of the Invoices & Broachers for sale of Multifunction Printer raised during the period 2009-2010:-

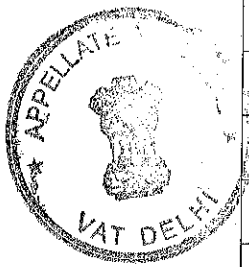
Summary of Certificates dated 15/05/2019 issued by Independent Chartered Engineer with respect of the multifunction machines sold during the relevant period

giving the breakup of the parts attributable to printing and other functions is in terms of the table below:

Sr. No.	Model No.	Turnover	Percentage of total parts attributable to printing	Percentage of total parts attributable to other functions.	Annexure No.
2005-06					
1	iRC3100N	12,21,000	80	20	1
2	iRC3170i	18,58,270	85.71	14.29	2
3	iRC3200N	5,18,000	85.71	14.29	3
4	iRC3220N	80,00,813	85.71	14.29	4
5	iRC624	2,48,600	85.71	14.29	5
6	iR105+	34,38,692	85.71	14.29	6
7	iR105	19,55,000	85.71	14.29	7
8	iR1210	16,05,266	84.62	15.38	8
9	iR1270F	90,000	84.62	15.38	9
10	iR1510	47,495	84.62	15.38	10
11	iR1570F	3,02,230	84.62	15.38	11
12	iR1600	60,51,521	84.62	15.38	12
13	iR1610F	49,500	84.62	15.38	13
14	iR2000	10,24,495	84.62	15.38	14
15	iR2016	83,29,576	85.19	14.81	15
16	iR2020	5,11,226	85.19	14.81	16
17	iR2230	66,66,658	85.19	14.29	17



18	iR2270	26,88,805	85.19	14.29	18
19	iR3870	22,20,703	85.19	14.29	19
20	iR3530	15,56,385	85.19	14.29	20
21	iR3570	36,23,570	85.19	14.29	21
22	iR4570	14,78,808	85.19	14.29	22
23	iR5570	26,71,300	85.19	14.29	23
24	iR6020i	6,33,577	85.19	14.29	24
25	iR6570	7,50,000	85.19	14.29	25
26	iR2570i	13,66,115	80	20	26
2008-09					
27	IR1022	3,04,853	84.62	15.38	27
28	iR1022F	2,65,731	84.62	15.38	28
29	iR2016	78,000	85.19	14.81	29
30	IR2018N	2,40,28,505	85.19	14.81	30
31	iR2020	49,500	85.19	14.81	31
32	IR2022N	1,37,72,957	85.19	14.81	32
33	IR2030	1,35,477	85.19	14.81	33
34	iR2230	8,55,937	85.71	14.29	34
35	iR2270	38,462	85.71	14.29	35
36	IR3025	38,40,595	85.71	14.29	36
37	IR3035	4,82,639	85.71	14.29	37
38	iR3235	4,85,136	85.71	14.29	38
39	iR3245	76,29,836	85.71	14.29	39
40	iR3530	1,06,24,947	85.71	14.29	40
41	iR4570	1,25,000	85.71	14.29	41
42	IR5055	43,31,449	85.71	14.29	42



43	IR5065	6,93,000	85.71	14.29	43
44	IR5075	19,97,527	85.71	14.29	44
45	IRC5185i	6,93,000	85.71	14.29	45
46	iRC2550i	30,51,072	85.71	14.29	46
47	iRC2570i	1,75,000	80	20	47
48	iRC2880I	4,13,462	80	20	48
49	iRC3080i	49,94,651	80	20	49
50	IRC3380I	15,30,972	85.71	14.29	50
51	iR3045	52,29,538	85.71	14.29	51
52	iR3225	68,56,994	85.71	14.29	52

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53	iR3530	9,90,273	85.71	14.29	53
54	iR2016	1,95,590	85.19	14.81	54
55	iR1024	1,08,390	84.62	15.38	55
56	iR3225	1,10,48,898	85.71	14.29	56
57	iRC3580i	15,66,465	85.71	14.29	57
58	iRC3180i	41,16,338	80	20	58
59	iRC2550i	68,24,845	85.71	14.29	59
60	IR5075	6,74,000	85.71	14.29	60
61	IR5065	26,19,341	85.71	14.29	61
62	IR5055	61,71,314	85.71	14.29	62
63	iR3245	72,93,104	85.71	14.29	63
64	iR3235	5,43,250	85.71	14.29	64
65	IR3035	96,154	85.71	14.29	65
66	iR2320L	49,84,419	84	16	66
67	iR2318L	2,01,52,098	84	16	67



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68	IR2030	7,52,826	85.19	14.81	68
69	IR2022N	92,34,001	85.19	14.81	69
70	IR2018N	1,06,14,961	85.19	14.81	70
71	IR2018i	5,99,973	85.19	14.81	71

It may be mentioned here that most of the documents came to be filed on behalf of the appellant(s) only after remand of the matter and in view of the observations made by the Hon'ble High Court while remanding the matter.

Said set of documents contains the above referred to certificate.

No certificate to the contrary has been submitted on behalf of the Revenue.

Contentions on behalf of Revenue

64. 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).

As noticed above, from the side of the Revenue, no evidence or material has been produced or proved on record to rebut the above said material, which was produced, as submitted on behalf of the dealer, even before the Assessing Authority and Objection Hearing Authority. The contention of the Revenue that certificate filed by one of the appellant's in respect of percentage of the parts of the printer is in contradiction with the certificate submitted in other matters as regards percentage of the parts of the printer and that no reliance should be placed on such certificate, cannot be accepted, the reason being that evidence led in one case cannot be used in the other either for corroboration or for contradiction. Therefore, we do not see any reason to disbelieve what is contained in the documentary evidence submitted by the appellant(s).



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65. 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 ^{there is no mechanism to know actual user, and} 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/^{machines} of the dealer-appellant^{are} ~~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?

66. Laser Jet Printer as an ^{output}~~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 ^{output}~~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 entry No.41(Sr.No.3) does not stipulate that Laser Jet Printer must be combined with some input unit, having regard to the predominant function, 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.



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In other words, Laser Jet Printer, even as single ^{output-} ~~input~~ unit is covered by Entry 41 A(Sr.No.3).

In view of the above discussion, we hold that

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

It is true that words "Multifunctional machine or device" do not appear either under sub heading or item or commodity described in entry No.8471 of Central Excise Tariff or in column No.2 of Sr.No.3 of entry 41A of III rd schedule of DVAT Act, but keeping in view the rules of interpretation as available in Note 7 of Chapter 84 of Central Excise Tariff that a machine, which is used for more than one purpose is, for the purposes of classification, same is to be treated as if its principal purpose were its sole purpose, significance of expression "Multifunction machine or device" or that of other function (s) of such a machine relegates to the background. That is why, in column



No.2 of Sr.No.3 of entry 41A available in IIIrd Schedule of DVAT Act there is no specific reference that multifunction machine or device shall not fall in column No.2 of Sr.No.3 of entry 41A. Had it been otherwise, Legislature in its wisdom would have clearly appended another note to the effect that column No.2 did not cover in its ambit any multifunction machine or device.

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

67. Learned counsel for the Revenue has referred to the observations made by Hon'ble High Court in Ricoh India Ltd.'s case, as regards non application of provisions of entry 8471 to the printers, because of the amendment made in the tariff item 8443 and 8471. Said observations in para 10 read as under :

“Post 1st January,

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

Tariff Item	Description of goods
(HSN Code)	Printing Machinery used for printing by

8443	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.

68. 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 observed 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.

Ld. Counsel for the appellant referred to response dated 28/02/2007, from the Department of Trade and Taxes, to the Executive Director of Manufacturers Association of Information Technology, New Delhi, in reply to the letter dated 16/01/2007 and 13/11/2006 as to the impact of HSN of tax rate under DVAT Act. Ld. Counsel submitted that the Commissioner (Policy), Department of Trade and Taxes, New Delhi observed in the above said letter dated 28/02/2007 that change of HSN code by Central Government did not affect the VAT rate applicable in any way and the rate of tax of IT products will be 4%.

Reference was also made to Note (2) appended to notification pertaining to entry at Sl. No. 41A, under DVAT Act, to contend that even though amendment was made in Central Excise Tariff, w.e.f. 01/01/2007 and certain commodities were shifted from entry No. 8471 to entry 8442, in view of note (2) of the



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notification under DVAT Act, the said amendment / change in the entry did not remove ADPM, or output or input device or Laser Jet Printers from column No. 2 of entry No. 41 A under DVAT Act, and these items are still covered by entry 41 A of notification under DVAT Act, and exigible to tax @ 4%, and not under the residuary entry.

Ld. Counsel for the appellant referred to Uninterrupted Power Supply Units which find mentioned in the notification in force from 30/11/2015 to 09/05/2016, and submitted that this item even though not covered by entry 8471 of Central Excise Tariff, was placed in the said notification under DVAT Act.

It may be mentioned here that the commodity, i.e. uninterrupted power supply units was ultimately removed from entry 41 A, vide subsequent notification dated 10/05/2016.

~~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 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



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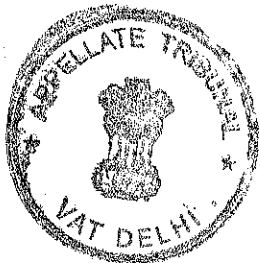
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Central Excise Tariff are concerned, learned counsel for the appellant has referred to decision in **Birla Jute and Industries Ltd. V. The State of Rajasthan and Ors.**, 1994(1) WLN 496, decided by Hon'ble High Court of Rajasthan and decision in **Jain Engineering Co. v. Collector of Customs, Bombay**, 1987 (32) E.L.T. 3(SC).

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:



"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.

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."



We may respectfully observe that this contention has been considered in view of the observations made by Hon'ble Apex Court in SLP No. 18637/12 decided on 25/2/2014.

69. 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.

70. 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

71. In view of the above findings, the impugned assessments and the impugned orders 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 also the documents submitted before this Appellate Tribunal, and accordingly issue fresh notice of assessment on the basis of said fresh calculations.

Penalty

72. 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 second proviso read^g as under :-

“Provided further that the penalty imposed under this section can be remitted where a person is able to prove existence of a reasonable cause for the act or omission giving rise to penalty during objection proceedings u/s 74 of this Act.”




Learned counsel for the appellant also referred to circular No. 16 of 2013-14 F.3(380)/Policy/VAT/2013/802-808 dated 19/9/2013 issued by learned Commissioner, VAT and pointed out that in the said circular it was explained that the right to objection against the notice of penalty assessment is still available with the aggrieved person and deletion of the second proviso to section 86 has not affected that right; that secondly, the amendment had also not

affected the power of OHAs as far as remission of penalty is concerned.

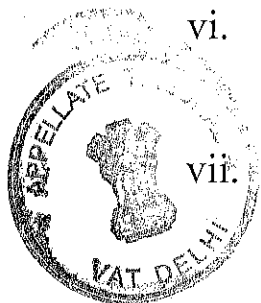
The contention raised by learned counsel for the appellant is that this is a case where it was not clear as to whether the law is absolutely clear on the matter or not and that the authorities also had to issue clarification from time to time.

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.



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. In support of his contention, learned counsel has referred to the following decisions :-

- i. Hindustan Steel Ltd. v. Agricultural ITO, Madikeri and Ors., (2001) 1 SCC 278.
- ii. CCE, Vishakhapatnam v. Andhra Pradesh Paper Mills Ltd., 2015 (319)ELT 554 (SC) affirmed by Hon'ble Supreme Court in M.J. Pharmaceuticals Ltd. v. Commissioner, 2016 (341) ELT a 162 (SC).
- iii. Pepsico India Holdings (P) Ltd., v. Dy. Commercial (A) IV, Commercial Taxes, Jaipur, 2018 (16) GSTL 249 (Raj.).
- iv. Ankleshwar Taluka ONGC Land Loosers Travelles Co. Op. v. CCE, Surat, 2013 (29) STR 352 (Guj.)
- v. CCE, Noida v. Delphi Automotive Systems Ltd. 2013 (292) ELT 189 (All.).
- vi. Surana Industries Ltd. v. Commissioner of Customs, 2015 (318) ELT 367 (SC).
- vii. Mentha & Allied Products Ltd. v. CCE, Meerut, 2004 (167) ELT 494 (SC).



73. 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.

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Result

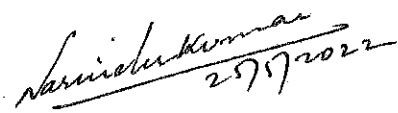
74. In view of the above findings, all the appeals are disposed of in the manner indicated above. As regards tax and interest, Learned Assessing Authority ^{to} simply ~~to~~ make fresh calculations in view of the above findings, and keeping in view the information available in the invoices/ documents whichever were submitted by the dealer – appellant initially before the Assessing Authority at the time of making of assessment, then during the objections, and before this Appellate Tribunal, and accordingly, to issue fresh notice of assessment on the basis of said fresh calculations.
75. File be consigned to the record room. Copy of the judgment be also placed in the connected appeals. Copy of the order be 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)

600-623/ATVAT/13
385-408/ATVAT/13
681-684/ATVAT/13
336-345/ATVAT/12, 492-497/ATVAT/13
Appeal No. 848-853/ATVAT/13
359-384/ATVAT/13
Copy to:- 64/ATVAT/18
498-545/ATVAT/13, 140-165/ATVAT/14
421-426/ATVAT/17, 160/ATVAT/19

4548-4555

Dated: 01/06/22

- (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

