

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **STA No. 06/2010**

% **Reserved on: 25th January, 2012**
Date of Decision: 4th May, 2012

RICOH INDIA LIMITED Appellant
Through Mr.Gajendra Maheshwari and Ms.
Rajeshwari, Advocates.
Versus

COMMISSIONER ...Respondent
Through Mr. H.C. Bhatia and Mr. K.K. Ahuja,
Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA, J.

Ricoh India Limited has preferred the present appeal under Section 81 of the Delhi Value Added Tax Act, 2004 (VAT, Act, for short) against the order dated 10th March, 2010 passed by the Appellate Tribunal, Value Added Tax, New Delhi (for short, the tribunal) in Appeal No.319/ATVAT/07-08. By the impugned order, the tribunal has affirmed the order dated 13th December, 2007, passed by the Commissioner, Department of Trade and Taxes, disposing of the application for advance ruling filed by the appellant under Section 84 of the VAT Act. The tribunal has upheld the finding of the Commissioner that multi functional printers/copiers/scanners having HSN code No.8471.60.29 and sales of spares and consumables of the above products having HSN code No. 8473.30.99 during the period 1st April,

2005 to 31st March, 2007 are taxable under the residuary head and, therefore, attract value added tax @ 12.5% and do not fall under Entry No. 41A of the third Schedule of the VAT Act and, therefore, are not taxable @ 4%.

2. The substantial question of law, on which we have heard learned counsel for the parties and which requires adjudication, is as under:-

“Whether the multi functional printers/machines and their spares and consumables, during the period 1st April, 2005 to 31st March, 2007, are taxable under Entry No. 41A of the third schedule of the Delhi Value Added Tax, 2004 or are taxable under the residuary head @ 12.5%?”

3. The appellant had filed an application under Section 84 of the VAT Act seeking advance ruling in respect of the applicable VAT rate on the multi functional printers/machines and their spares and consumables during the period 1st April, 2005 to 31st March, 2007 (hereinafter referred to as “the relevant period”). We may notice that the application and the question raised in the said application itself stated that the multi functional printers/copiers/scanners fall under the HSN code No.8471.60.29 and the spares and consumables fall under the HSN code No.8473.30.99. However, the declaration/statement ignores the controversy, whether the product(s) of the appellant are in fact “multi functional printers”, which fall within the aforesaid HSN Code. Another aspect/question raised is whether and to what extent the HSN Code is

applicable as far as Entry No.41A to the third schedule of the VAT Act is concerned.

4. Sales Tax on interstate sale is levied by the Union Government under Entry No.92A of List I, while sales tax or Value Added Tax on intrastate transactions is a State subject and each State has power to legislate on the said subject and impose taxes on sale/purchase of goods other than the newspapers and is authorized under Entry No. 54 of List II of the Constitution.

5. There are four schedules to the VAT Act relating to the rate of tax. Schedule I consists of goods which are exempt from tax. There are three entries in the schedule II and the goods mentioned in said entries are taxable @ 1%. Goods mentioned in schedule III are taxable @ 4% (enhanced to 5% after 13.1.2010). There are 12 entries in Schedule IV and the goods mentioned in the said entries are taxable @ 20%. All other goods which are not classified and mentioned in the Schedules I to IV are taxable @ 12.5%. The main and principal dispute is whether the products sold by the appellant are covered by Entry No.41A of the third schedule of the VAT Act or are unclassified goods that attract tax @12.5%. In case the goods in question are covered by Entry No.41A of the third schedule of the VAT Act, the tax payable is @ 4%, otherwise, the tax is payable @ 12.5%.

6. During the relevant period, Entry No.41A of the third schedule has undergone three amendments. During the period 1st April, 2005 to 7th August, 2005, Entry Nos. 41 and 41A were as under:-

“

Entry no.	Description
41	IT Products including computers, telephone and parts thereof, teleprinter and wireless equipment and parts thereof.
41A	IT products notified by the Ministry of IT as specified is below (I to XXII) x x x x x x x (XXIII) computer systems and peripherals, Electronic diaries. x x x x x x x

”

7. During the period 8th August, 2005 to 29th November, 2005, Entry Nos. 41 and 41A were as under:-

“

Entry no.	Description
41	Computers, telephone and parts thereof, teleprinter and wireless equipment and parts thereof.
41A	IT products notified by the Ministry of IT as specified below (I to XXII) x x x x x x x x x x x (XXIII) computer systems and peripherals, Electronic diaries. x x x x x x x x x x x

”

8. Entry Nos. 41 and 41A underwent substantial changes with effect from 30th November, 2005 and thereafter during the relevant period, read:-

“41. Computers, telephone and parts thereof, teleprinter and wireless equipment and parts thereof, Mobile phone and all mobile accessories costing upto rupees ten thousand.

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).”

SI no.	Description	Central Excise Tariff Heading
(1)	(2)	(3)
1.	x x x x x x x	x x x x x
2.	x x x x x x x	x x x x x
3.	Automatic data processing machines and units thereof, magnetic or optical readers, machines for transcribing data into data media is coded form and machines for processing such data. 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,	8471

	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.”

9. Central Excise Tariff Headings had undergone one relevant amendment during the relevant period. In order to appreciate the controversy, the relevant changes, Section notes and Chapter notes are noticed and reproduced below:-

Prior to 1st January, 2007

“8471	Automatic data processing machines and units Thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included.	
8471 10 00	Analogue or hybrid automatic data processing machines.	u 16%
8471 60	Input or output units, whether or not containing storage units in the same housing.	u 16%
8471 60 10	Combined input or output units	
	Printer	u 16%
8471 60 21	Line printer	u 16%
8471 60 22	Dot matrix printer	u 16%
8471 60 23	Letter quality daisy wheel printer	u 16%
8471 60 24	Graphic printer	u 16%
8471 60 25	Plotter	u 16%
8471 60 26	Laser jet printer	u 16%
8471 60 27	Ink jet printer	u 16%
8471 60 29	Other	u 16%

Relevant Section Note

3. 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.

4. Where a machine (including a combination of machines) consists of individual components (whether separate or interconnected by piping, by transmission devices, by electric cables or by other

devices) intended to contribute together to a clearly defined function covered by one of the headings in Chapter 84 or Chapter 85, then the whole falls to be classified in the heading appropriate to that function.

5. For the purposes of these notices, the expression “machine” means any machine machinery, plant equipment, apparatus or appliance cited in the heading of Chapter 84 or 85.

Relevant Chapter Note

5.(A) 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;

(b) It is connectable to the central processing unit either directly or through one or 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.

(C) Separately presented units of an automatic data processing machine are to be classified in heading 8471.

(D) Printers, keyboards, X-Y Co-ordinate input devices and disc storage units which satisfy the conditions of paragraphs (B)(b) and (B) (c) above, are in all cases to be classified and units of heading 8471.

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

6. Heading 8482 applied, inter alia, to polished steel balls, the maximum and minimum diameters of which do not differ from the nominal diameter by more than 1% or by more than 0.05 mm, whichever is less. Other steel balls are to be classified in heading 7326.

7. 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.”

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

“

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

8471	Automatic Data Processing machines and units thereof; magnetic or optical readers, machines for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included.
8471 60 29	Other

5.(A) For the purposes of heading 8471, the expression “automatic data processing machines” means machine capable of:

- (i) storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme;
- (ii) being freely programmed in accordance with the requirements of the user;
- (iii) performing arithmetical computations specified by the user; and
- (iv) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run;

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

(C) Subject to paragraph (D) and (E), a unit is to be regarded as being a part of an automatic data processing system if it meets all of the following conditions:

- (i) It is of a kind solely or principally used in an automatic data processing system;
- (ii) It is connectable to the central processing unit either directly or through one or more other units; and
- (ii) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

Separately presented units of an automatic data processing machine are to be classified in heading 8471.

However, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of (ii) and (iii) above, are in all cases to be classified as units of heading 8471.

(D) Heading 8471 does not cover the following when presented separately, even if they meet all of the conditions set forth in paragraph (C).

(i) printer, copying machines, facsimile machines, whether or not combined;

(ii) apparatus for the transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network);

(iii) loudspeakers and microphones; SECTION XVI
491 CHAPTER 84

(iv) television cameras, digital cameras and video camera recorders;

(v) monitors and projectors, not incorporating television reception apparatus.

(E) Machines incorporating or working in conjunction with an automatic data processing machines and performing a specific function other than data processing are to be classified in the heading appropriate to their respective functions, or, failing that, in residual headings.

6.

7. A machine which is used for more than one purpose is, for the purpose of classification, is to be treated as if its principal purpose was its sole purpose.....”

11. We may first notice the decision of the Supreme Court in *Xerox India Ltd. Vs. Commissioner of Customs, Mumbai 2010 (260) ELT 161 (SC)*. The Supreme Court in the said case held that the multi functional machines in the said case, which were principally performing the function of a printer, should be classified under the head 8471.60 and the said goods could not be classified under the residuary head 84.79.89 for the purpose of taxation under the Customs Act, 1962. In the said case, the Supreme Court noticed Chapter Note 5 of Chapter 84 and

referred to Rule 3(a) of General Rules of Interpretation and Note 3 of

Section XVI, applicable to Chapter 84 and observed as under:-

“13) It is not in dispute that the Multi-Functional Machines in question, Xerox Regal 5799 has about 85% of the its total parts and components along with manufacturing cost allocated to printing, as does 74% of the Xerox XD155df model. This clearly shows that the printing function emerges as the principal function and gives the Multi-Functional Machines its essential character. Having such a nature, it also clearly meets the three-fold requirement of chapter note 5(B), as it is to be used principally in ADPM, it is connectable to the Central Processing Unit, and it is able to accept data in a form (codes or signals) which can be used by the system. Further, there would be no application of chapter note 5(E) as correctly pointed out by the learned counsel for the appellants, as the Multi-Functional Machines are presented independently. Moreover, since predominant components are relating to printing function, chapter note 5(D) also becomes relevant which includes printers under heading 84.71. We are also satisfied with the contention of the appellants that based on the nature of the functions they perform, the Multi- Functional Machines would serve as input and output devices of an ADPM (computer) and thus serve as unit of an ADPM, which on a reading of chapter note 5(C), clearly classifies them as falling under heading 84.71.60 of the Act.

14) We are not in agreement with the submission made by the learned senior counsel for the Revenue. The primary contention of the respondent is that no one function of the Multi-Functional Machines, even printing, can be seen as predominant. This has clearly been shown to be incorrect on facts, and in light of the submissions by the appellants, there has been no case made out for classification of the goods under the residuary heading 84.79.89. We may also notice that the Tribunal, while considering the decision on which reliance was placed by learned counsel appearing for the appellants, has stated that those decisions are distinguishable on facts without appreciating that in principle, the case cannot be distinguished.

15) In view of the above, we are of the opinion that the correct classification for the imported Multi-Functional Machines involved in this case, namely models Xerox Regal 5799, Xerox Workcentre XD 100 and Xerox Workcentre XD 155df should be under Customs Tariff Chapter heading 84.71.60. Accordingly, the appeal is allowed and the order passed by the Tribunal in Appeal No. C/300/2002-B dated 05.11.2002 is set aside. Parties to bear their own costs.”

12. The contention of the appellant is that the aforesaid decision is squarely applicable and has been wrongly ignored and not applied by the tribunal. The contention of the respondent is to the contrary. Reference by both the parties was made to the four notes in the VAT Act applicable to Entry 41, which have been quoted above with reference to application of the Rules of Interpretation of the provisions of Central Excise Tariff Act, 1985 read with the explanatory notes.

13. At first, we deem it appropriate to examine the four notes in the VAT Act. Note (1) stipulates that Rules for Interpretation of the provisions of the Central Excise Tariff Act, 1985 read with the explanatory notes “as updated from time to time” published by the Customs Cooperation Council, Brussels will apply for interpretation. Note (2) states that where commodities described in any heading or sub-heading in the specified entries in the VAT Act are different from the corresponding description in the Central Excise Tariff Act, 1985, then the commodities described in the entry in the VAT Act would be covered by the scope of the notification (i.e. the notification in question

issued under the VAT Act) and the commodity covered by corresponding description in the Central Excise Tariff Act, 1985 shall not cover the scope of the notification. Note (2) is rather ambiguous and is capable of different interpretations. In these circumstances, it is important to understand the purport and objective behind the said note. A glance at the entries of the said notification would show that under column (2) commodities by description have been stated and under column (3) reference is made to the Central Excise Tariff Heading. Note (2) seeks to clarify and state that in case the entry or description in column (2) matches with the description of the entry in Central Excise Tariff Act, 1985, then the entry in the VAT Act should be given the same meaning to cover/include the goods specified in the corresponding entry in the Central Excise Tariff Act, 1985. However, in case the description of the goods in column (2) of the entry is different from the corresponding description of the goods in the Central Excise Tariff Act, 1985, reference to the entry in the Central Excise Tariff Act, 1985 should not be made. This becomes clear when we read Note (3). The said note stipulates that when description of any heading or sub-heading in the Act matches with the corresponding description in the Central Excise Tariff Act, 1985, then, all commodities covered for the purpose of the said tariff under the Central Excise Tariff Act, 1985, would be covered under the scope of the notification. Note (3) also clarifies that

the term “notification” is not with reference to the four notes, but the notification issued under the VAT Act. The reason is obvious that any good not covered by the notification would fall outside the scope of schedule III and would not be taxable @ 4-5%, but @ 12.5%. The aforesaid interpretation, gains strength and merits acceptance when we refer and interpret Note (4). Note (4) states that if the commodity or good falls under the heading or sub-heading “other” in the Central Excise Tariff Act, 1985, then interpretation stipulated in Note (2) would apply. In other words, the goods would be covered by the residuary provision and taxable accordingly. The word “heading” in Note (4) is superfluous as the word “other” never appears in the heading, but can be a sub-heading under the Central Excise Tariff Act, 1985.

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

commodities/goods are not covered by the description given in the column, then commodities/goods will fall under the residuary tax rate.

15. The aforesaid notification containing Notes (1) to (4) is applicable with effect from 31st November, 2005 and do not apply to the period prior thereto. Therefore, for the period prior to 31st November, 2005, we need not refer to Entry No.8471 of the Central Excise Tariff Act, 1985. For the relevant period, we have to only refer to the entry to schedule XXIII, which reads:-

“computer systems and peripherals, Electronic diaries”

16. The question, therefore, which is raised and has to be answered, is whether the multi functional machines or printers are computer peripherals or not? The term “peripheral” has not been defined in the VAT Act and, therefore, has to be given its natural and common sense meaning. A computer mainly consists of Central Processing Unit, which cannot operate and function without peripherals like monitor, keyboard, printer etc. Some of the peripherals may be mounted or housed in the computer cabinet itself like Hard Disc, CD ROM, Mic etc. Sometime peripherals can be separate and have to be attached to the Central Processing Unit. The term “peripheral” has been defined in Oxford Dictionary to mean as under:-

“(of a device) able to be attached to and used with computer, though not an integral part of it”

17. A multi functional machine can be a computer peripheral, if its principal or sole purpose is to be attached and function as a computer ancillary. A multi functional machine will be and qualify as a computer peripheral when its main/predominant purpose is to scan documents, load data or work as an input devise of the computer or work as an output device to take printouts etc. from the computer. At the same time, there can be photocopiers, whose main purpose is to copy or act as a duplicating machine to make copies of documents. Incidentally, they may also be used as a printer. This would require elucidation and examination of factual matrix in each case and the machine in question on case to case basis.

18. We have quoted above the relevant portion of the decision of the Supreme Court in *Xerox India Ltd.* (*supra*). In the said case, after applying the relevant notes or rule of interpretation, the finding recorded was that the multi functional machines therein had 84% or 74% parts of a computer printer and, therefore, it was held that they were output devices covered under Entry No. 8471.60. Therefore, in respect of the period prior to 30th November, 2005, we answer the aforesaid question of law recording that the multi function machines may or may not be computer peripheral, depending upon the main purpose or function

which the machine was designed and manufactured to perform. If the principal and predominant purpose was to act as a computer printer or scanner or as an input or output device of the computer, the multi functional machine would qualify and fall under entry 41A clause XXIII. However, if the machine was designed and manufactured for some other primary purpose, then it would not be covered by Entry 41A clause XXIII. Mere description or the nomenclature given by the manufacturer or trader is not relevant and the assessee should justify and establish their claim. We have applied the doctrine/test of principal and dominant purpose, as it is the most appropriate and logical test. The said test was applied by the Supreme Court in the case of Xerox India Ltd. (supra) for the purpose of Customs Act. A multi functional printer or machine may be able to perform several functions, but an ancillary or incidental function would not be relevant. The relevant determining factor in such cases even for the period before 31st November, 2005, would be the dominant or main purpose. This would prevent misuse and mis-declaration by the seller, who may try and sell a photocopier and a duplicating machine as a computer peripheral when, in fact, the main purpose and object of the machine was is to make copies or duplicate documents.

19. With regard to the period after 30th November, 2005, we have to examine the relevant entries in 41A and compare them with the Entry

No.4171 of the Central Excise Tariff Act, 1985. We have also to keep in mind the four notes, which we have interpreted above. As per the appellant, the multi functional machines/printers fall in the category of input/output units, which have been separately categorized at Sr. No.3 under column (2). It is not the case of the appellant that the aforesaid devices should be treated as an automatic data processing machines. It is claimed that they are input or output units. 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 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”.

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

21. The next aspect, which has to be decided, is whether or not a multi functional printer/machine is an input or output unit under Entry 41A of the VAT Act. In order to decide this issue, we feel that the doctrine of dominant or principal purpose has to be applied. Note 1 read with the Rules of interpretation of Central Excise Tariff Act and Explanatory notes of Customs Cooperation Council support our ratio. Accordingly, it has to be determined in each case with reference to machines in question whether its principal or dominant purpose is to work as an input or output unit of the computer i.e. automatic data processing machines whether analogue, hybrid or electronic. While applying the aforesaid test, reference can be made to the rules of interpretation of the provisions of Central Excise Tariff Act, 1985 with the explanatory notes updated from time to time published by the Customs Cooperation Council, Brussels. These would include the relevant section and chapter notes. However, reference to the relevant chapter and section note must be made with caution. The chapter/section notes when general can be referred to and applied. But they can also specifically deal with and explain a particular entry, which may not be synonymous/identical or meet the description of the entry in the notification issued under the VAT Act. In such circumstances, to apply the Section or Chapter Notes not relating to general principles of interpretation, would lead to difficulties and incongruities. This caution is necessary in view of the

Notes (2) to (4) of the notification, which have been interpreted above. Thus, with regard to the period after 30th November, 2005, the question of law mentioned above is answered holding, inter alia, that the doctrine of dominant purpose of the multi functional machine will determine/decide whether it is an input or output unit of an automatic data processing machine. In case the principal or dominant purpose is to act as input or output unit, then it would qualify and will be covered by Entry 41A at Sr. No.3. However, in case multi functional machine is a duplicator or a photocopying machine, which incidentally can be used as a printer or a scanner etc., the said machine would not qualify and cannot be treated and regarded as input or output unit of automatic data processing machine. Said machines would not qualify under Entry 41A and will be covered by the residuary tax rate. Question referred to above is accordingly answered.

22. As noted above, the factual aspects with reference to each machine has to be examined. The appellant had applied for advance adjudication/ruling. They should have produced necessary data/particulars to show and establish that principal/dominant object of the machine was to perform functions of an input or output unit of an automatic data processing machine. The onus was on the appellant to show and establish the principal or dominant purpose as they were the manufacturers or traders of the said machines. Thereafter, it was open to

the Revenue to contradict or take a contrary stand, on basis of the relevant material and evidence, if required and necessary take help of expert evidence. In the absence of factual details, we cannot give any firm opinion. We are not inclined to remit the matter, as the appellant had made an application for advance ruling and there have been lapses on their part and more importantly the question and issue can be examined at the stage of assessment/appellate proceedings. The question of law is accordingly answered. The appeal is partly allowed and the order of the tribunal to the extent contrary to the observations made above shall be treated as set aside. In the facts and circumstances of the case, there will be no order as to costs.

-sd-
(SANJIV KHANNA)
JUDGE

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(R.V. EASWAR)
JUDGE

May 4th, 2012
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