

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

+ **W.P.(C) 9805/2009**

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

CANON INDIA P. LIMITED Petitioner
Through Mr. S. Ganesh, Sr. Adv, Mr.
Rajiv K. Virmani, Sr. Adv. with
Amar Gupta, Mr. Dheeraj Nai
and Mr. Cheetan Chopra, Advs.
versus

VALUE ADDED TAX OFFICER AND ANR. Respondent
Through Mr. H.C. Bhatia and Mr. K.K.
Ahuja, Advs.

+ **W.P.(C) 8066/2011**

INFRES METHODEX LTD Petitioner
Through Mr. Randhir Chawla, Adv.
versus

VALUE ADDED TAX OFFICER AND ORS Respondent
Through Mr. H.C. Bhatia and Mr. K.K.
Ahuja, Advs.

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

SANJIV KHANNA, J.

The present writ petitions have been filed by Canon India Private Limited and Infres Methodex Limited. In the case of Canon India Private Limited, they have challenged the notice of default assessment of tax and interest issued under Section 32 of the Delhi Value Added Tax Act, 2004 (Act, for short).

2. By an interim order dated 6th July, 2009 in the case of Canon India Pvt. Ltd., it was directed that there shall be stay of the impugned demand. The said interim order has continued. In fact, the writ petition filed by Canon India Private Limited was entertained as at that stage reference was made to the decision of the advance ruling authority i.e. Commissioner, Trade and Taxes, Delhi in the case of Ricoh India Limited. The said decision of advance ruling authority was affirmed by the Appellate Tribunal and thereafter was challenged in this Court in STA 6/2010. In STA 6/2010, we have examined the question whether or not multi functional printers are input or output units under Entry No.41A of the notification issued under the Act. In the said case, we have held as under:-

“18. ... 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 devise 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".

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21. 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/apellate 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.”

3. Similarly, the writ petition filed by Infres Methodex Limited was entertained because of the writ petition filed by Canon India Private Limited and subject matter of controversy was also pending consideration in STA 6/2010. In this case, assessments have been framed for the assessment year 2007-08 by subjecting to tax multifunctional product under the unclassified rate of 12.5%. In the writ petition it has been stated that this order has been passed following the determination order passed by the Commissioner as an advance ruling authority in the case of Ricoh India Limited, which has been affirmed by the tribunal.

4. Our decision in the case of Ricoh India Limited would be equally applicable to the facts of the present case.

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

6. In these circumstances, we feel that these writ petitions should not be entertained and the petitioners should be relegated and asked to exhaust statutory remedies where both questions of law and facts can be elucidated and examined. Normally when alternate remedy is available, writ petitions, especially, in taxation matters are not entertained. (See *Bafna Healthcare Pvt. Ltd. and ors. versus Commissioner of Central Excise, Delhi- IV* W.P.(C) No. 2448/2010 dated 4th August 2011.)

7. These writ petitions are accordingly dismissed with a direction that the petitioners should take recourse to the statutory remedies. The interim orders shall remain in force for a period of 60 days to enable the petitioners to approach the departmental/appellate authorities for stay of

the impugned demand. In case there is any delay in filing of appeal etc. because of the pendency of the present writ petitions, the authorities shall condone the delay as the petitioners were bonafidely pursuing the present writ petitions before this Court. Appeals/objections will not be dismissed in case the same are filed within a period of four weeks from today. In the facts of the present case, there will be no order as to costs.

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(SANJIV KHANNA)
JUDGE

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(R.V. EASWAR)
JUDGE

May 4th, 2012
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