$~40, 41 & 42

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

\+ **VAT APPEAL 8/2018 & CM Appl. Nos.49108-49110/2018**

\+ **VAT APPEAL 9/2018 & CM Appl. Nos.49111-49113/2018**

\+ **VAT APPEAL 10/2018 & CM Appl. Nos.49114-49116/2018**

XEROX INDIA LTD. ..... Appellant
CANON INDIA PVT. LTD. ..... Appellant
H.P. INDIA SALES PVT. LTD. ..... Appellant

Through: Mr.V.Lakshmi Kumaran, Advocate with Mr.Karan Sachdev, Mr.Yogendra Aldak & Mr.Shrey Ashat, Advocates

versus

COMMISSIONER OF TRADE AND TAXES,DELHI..... Respondents

Through: Mr.Sanjoy Ghose, ASC, GNCTD with Mr.Rishab Jetley, Advocate in VAT APPEAL 8/2018.

Mr.Satyakam, Addl.Std.Counsel with Mr.Akshay Allagh & Mr.Vinod Chako in VAT APPEAL 9/2018.

Mr.Gautam Narayan, ASC for GNCTD with Ms.Mahamaya Chatterjee & Ms.Shivani Vij, Advocates with Mr.Akshay Allagh, Department of Trade & Taxes in VAT APPEAL 10/2018.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON’BLE MR. JUSTICE PRATEEK JALAN

O R D E R

% **27.11.2018**

1. The question of law urged on behalf of the appellants is two-fold – whether in the given circumstances the VAT Tribunal, who made the impugned order, could have, without notice to the appellants/assessee,

remitted the matter; and secondly, whether the decision of the VAT Tribunal that the product in question is not an automatic data processing machine classifiable under TI 8471 but rather classified under the residuary item attracting higher rate of VAT [@ 12.5%] is correct.

2. The impugned order of the Tribunal, it appears, was made after prolonged hearing of nearly two years. We note that the Tribunal had reserved the order after concluding the hearing, and proceeded to deliver the judgment in open court, just a day before the date of superannuation of one of its members. The appellant contended that in view of the mandate of Section 76 of the Delhi VAT Act, 2014, the VAT Tribunal could not have unilaterally remitted the subject matter of the appeal, in the manner that it did, without following the prescribed procedure. In this regard this Court is of the opinion that the Tribunal's order is procedurally irregular. This Court is also of the opinion that secondly and more fundamentally, the Tribunal's conclusions are premised on an assumption that the appellants/assessee did not produce the relevant materials to substantiate its contentions with respect to classification under TI 41(A) of Chapter 8471.

3. The appeal before this Court contains the objections filed – these in turn enclose a 20 page brochure and copy of the invoices of sale of the product in question. Furthermore, the Objection Hearing Authority (hereafter referred to as "OHA") order also takes note of a certificate from Debra A Brindisi, Manager Global Trade Compliance, describing the product and its technical configurations. The note appears to contain observations with respect to the functioning and configuration of the product. Having regard to these materials on record, the Court is of the

considered view that the VAT Tribunal's conclusion, premised upon the understanding that the appellant/assessee did not produce any relevant material or document, is correct insofar as materials and documents were not considered by the Assessing officer/Adjudicating authority in the first instance. They are not factually correct otherwise because OHA had the occasion to deal with them. For these reasons, the Court is of the opinion that the impugned order of the Tribunal cannot be sustained.

4. The impugned orders are accordingly set aside. The VAT Tribunal shall proceed to hear and dispose of the appeals before it in accordance with law, after considering all contentions of the parties. It is open to the parties to rely on all materials; the VAT Tribunal may also seek further remand report/factual report from the concerned Assessing Authority with respect to the functionality of the product and any other related technical inputs. While doing so, the Tribunal should specify the parameters of inquiry and not keep it open ended.

5. All rights and contentions of the parties are hereby reserved.

6. The appeals are accordingly disposed of.

S. RAVINDRA BHAT
(JUDGE)

PRATEEK JALAN
(JUDGE)

NOVEMBER 27, 2018
'hkaur'