

# M/S Canon India Private Limited vs Commissioner Of Trade And Taxes Delhi & ... on 31 May, 2023

**Author: Yashwant Varma**

**Bench: Yashwant Varma, Dharmesh Sharma**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 7899/2023 & CM APPL. 30505/2023 (Interim

M/S CANON INDIA PRIVATE LIMITED ..... P

Through: Mr. V. Lakshmikumaran,

Karan Sachdev, Mr. Atul

Gupta, Mr. Yogendra Ald

Mr. Agrim Arora and Mr.

Sumit Khadaria, Advs.

versus

COMMISSIONER OF TRADE AND TAXES DELHI & ANR.

..... Respond

Through: Mr. Rajeev Aggarwal, ASC Mr

Mr. Manbhar Mittal, Advs. f

respondents.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

% 31.05.2023 CM APPL. 30506/2023 (for exemption) Exemption allowed, subject to all just exceptions. Application shall stand disposed of.

W.P.(C) 7899/2023 & CM APPL. 30505/2023 (Interim Stay)

1. Notice. Since the respondents are duly represented, let a counter affidavit be filed within a period of three weeks from today. The petitioner shall have a week thereafter to file a rejoinder affidavit.

2. Let the matter be called again on 18.07.2023.

3. The Court takes note of a preliminary objection which has been taken by Mr. Aggarwal, learned counsel representing the respondents, who contends that the writ petition which impugns the assessment orders would be clearly not maintainable bearing in mind the statutory remedies which are available to the petitioner under Delhi Value Added Tax Act, 2004 [DVAT Act].

4. The Court, however, finds itself unable to sustain that objection This is a digitally signed order.

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for reasons which follow.

5. Mr. Lakshmikumaran, learned counsel appearing for the petitioner, has essentially contended that the Assessing Authority has clearly sought to review and sit over the order of remit which had been made by the Tribunal as would be evident from the following facts.

6. Learned counsel firstly drew the attention of the Court to the submissions which were addressed before the Tribunal and which stand duly recorded as under:-

"45.....

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."

7. The Tribunal while proceeding to reject the contention of the petitioner that the item was liable to be viewed as an Automatic Data Processing Machine [APDM] proceeded to hold as follows: -

"53.....

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, This is a digitally signed order.

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Server on 08/10/2023 at 06:06:34 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.""

8. However while dealing with Entry 41A of the Third Schedule of the DVAT Act, the Tribunal had after hearing parties ultimately come to return the following findings: -

"57.....

When we see it from other angle, i.e. considering the commodities mentioned in column (2), Sr.No.3 of entry 41A, the multifunction product being "input units" and "output units", is covered by the notification. In view of note (2) of the notifications under DVAT Act, even though having description as an individual item, the multifunction machine or device would not fall in residuary entry.

58.....

Laser Jet Printer as an output 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 output 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 output unit is covered by Entry 41 A(Sr.No.3)."

9. The Tribunal ultimately disposed of the batch with the This is a digitally signed order.

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"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 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 assessments, then during the objections, and before this Appellate Tribunal, and accordingly, to issue fresh notice of assessment on the basis of said fresh calculations."

10. As would be manifest from the above, a categorical finding had come to be recorded by the Tribunal that Multifunction Printers would clearly fall within the ambit of SI. No. 3 of Entry 41A of the Third Schedule of the DVAT Act. There was thus no occasion for the Assessing Authority to have reopened the entire issue especially when the matter had been remitted only for the purposes of quantification of the demand. The Assessing Authority has prima facie committed a manifest illegality in attempting to reclassify Multifunction Printers as falling under the residual entry of Section 4(1)(e) of the DVAT Act and thus taxable @ 12.5% . In terms of the order of the Tribunal, it was obliged to treat that article as falling within Entry 41A and merely recompute the demand. Matter requires consideration.

11. Till the next date of listing, there shall be stay of the impugned assessment orders dated 19 May 2023 and 24 May 2023.

YASHWANT VARMA, J.

DHARMESH SHARMA, J.

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