(2007) 08 DEL CK 0172

In the Delhi High Court

Case No : ST. APPL 2 of 2006

Commissioner of Trade and Taxes APPELLANT

Vs

Symphony Enterprises RESPONDENT

Date of Decision : 09-08-2007

Acts Referred:

Delhi Value Added Tax Act, 2004 — Section 4

Citation : (2007) 08 DEL CK 0172

Hon'ble Judges : Madan B. Lokur, J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : H.L. Taneja, for the Appellant; Balram Sangal and Sumit Sharma, in ST. APPL 3/2006 and A.R. Madhav Rao and Vishwanath Shukla, for the Respondent

Final Decision : Dismissed

Judgement

Madan B. Lokur, J.—The Revenue is aggrieved by an order dated 13th September, 2006 passed by the Appellate Tribunal, Value Added Tax, Delhi in Appeal Nos. 162, 179 and 247/ATVAT/05-06.

2. The controversy in the present appeals is extremely narrow inasmuch as the question that requires to be determined is whether ''Ink Cartridges'' and ''Toner Cartridges'' used in Inkjet printers and Laser jet printers are covered under Entry No. 41 A (xxv) of the Third Schedule appended to the Delhi Value Added Tax Act, 2004 (''DVAT Act''). If the goods are so covered, they would be exigible to tax at 4% u/s 4(i)(b) of the DVAT Act, otherwise they would be liable to tax at 12-1/2% u/s 4(i)(e) of the DVAT Act.

3. The two relevant entries in the Third Schedule are Entry No. 41A(xxv) and 53 which read as follows:

41A IT products notified by the Ministry of IT as specified below:

(i) to (xxiv) xxxx xxxxx xxxx xxxx

(xxv) Parts and Accessories of HSN 84.69, 84.70 & 84.71

Entry 53 reads as follows:

Printing ink excluding toner and cartridges.

4. There is of course no doubt that toner and cartridges do not fall under Entry 53 of the Third Schedule. The question that requires to be considered is whether toner and cartridges fall under Entry 41A(xxv).

5. A perusal of the entries show that it is necessary to go back to HSN 84.69, 84.70 and 84.71. Learned Counsel for the assessed has drawn our attention to the entry 84.71 of the HSN. This contains a large number of sub-entries. A reference has been made to Entries 8471 60 21 onwards. They deal with different kinds of printers that is Line printer, Dot matrix printer, Letter quality daisy wheel printer, Graphic printer, Plotter, Laser jet printer and ink jet printer etc.

6. There is no dispute that toners and cartridges are used in the above kinds of printers. Therefore, toners and cartridges are part and accessories of goods mentioned in HSN 84.71 and Therefore, covered by Entry 41A (xxv) of the DVAT Act, 2004.

7. Learned Counsel for the Revenue has relied upon the judgments of the Hon''ble Supreme Court in Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd., and O.K. Play (India) Ltd. Vs. Commissioner of Central Excise, Delhi-III, Gurgaon, . We cannot see the relevance of these judgments to the present case. None of these decisions deal with the DVAT Act.

8. The Tribunal has taken the correct view and we do not find any reason to disagree with the view taken by the Tribunal. There is no substantial questions of law that arise in these appeals.

9. These appeals are dismissed.

