
(2012) 10 GAU CK 0037

In the Gauhati High Court

Case No : Writ Petition (C) No. 5216, 5217 and 5222 of 2009

Hewlett Packard India Sales Pvt. Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 15-10-2012

Acts Referred:

Assam Value Added Tax Act, 2003 — Section 59

Citation : (2012) 56 VST 472

Hon'ble Judges : Adarsh Kumar Goel, C.J.; Arup Kumar Goswami, J

Bench : Division Bench

Advocate : Ashok Saraf, D. Baruah, Miss N. Hawelia, Ms. M.L. Gope and S. Chetia, for the Appellant; D. Saikia, for the Respondent

Final Decision : Allowed

Judgement

A.K. Goel, C.J.—This order will dispose of W.P. (C) Nos. 5216, 5217 and 5222 of 2009 as all the three writ petitions have been filed by the same assessee for three different assessment years. The common issue raised in all the three writ petitions is whether "inkjet cartridges" and "toner cartridges" are covered by entry 4 of Part B of the Second Schedule to the Assam Value Added Tax Act, 2003, which lists items attracting lesser rate of tax or covered by residue entry in Schedule V providing higher rate of tax.

2. The petitioner is engaged in sale of IT products and is registered under the Assam Value Added Tax Act, 2003 and the Central Sales Tax Act, 1956. During the assessment proceedings for the assessment year 2008-09, the petitioner claimed that the above items were covered by lower rate of tax which plea was not accepted. Assessment order dated September 12, 2008 was passed accordingly and demand for higher rate of tax was raised. The said order was upheld by the appellate authority vide order dated October 15, 2009, relying upon clarification dated October 16, 2006 issued by the Commissioner.

3. We have heard learned counsel for the parties.

4. Before adverting to the rival contentions, it may be appropriate to reproduce the relevant entries:

Schedule II, Part B

Schedule V

5. It may also be necessary to refer to the discussion in the impugned orders.

6. In the assessment order it was observed:

Cartridges of a printer are more apt to be regarded as well as are commonly understood as consumable rather than parts and accessories of it. The products under question appear to be a compounded device for storing ink as well as for spraying it on the body of the blank paper to produce printed copy. There is no doubt that the printing ink loaded in the device does not qualify to be included as "parts and accessories" of the printer when considered on its own. As regard the inbuilt contrivance for spraying the ink, it is analogous to a fuel injection pump of a motor vehicle or can be understood so. It was held in the case of Ghaziabad Engineering Co. (P.) Ltd. Vs. Commissioner of Sales Tax , that a fuel injection pump can neither be regarded as an accessory nor a spare part of motor vehicle.

Therefore, the averment of the dealer for treating cartridges under entry Sl. Nos. 3 and 4 of the Second Schedule, Part B, is found not acceptable.

As regards the contention of H.S.N. classification adopted under the Central Excise Tariff Schedule enumerating the item inkjet cartridges under the broad head 8443 along with printers, ink, parts, etc. it would be worthwhile to remember that the State Legislature enjoys wide freedom in choosing the rate of tax to be imposed on the subject covered by its allotted legislative field and is, therefore, not bound by any system of classification of goods adopted by other bodies. Further only the entries contained in the Second Schedule, Part C, make a reference to the corresponding entry heading of the Central Excise Tariff Act, 1985. The said reference is conspicuously absent in entries incorporated in other Schedule or Part of Schedules. The dealer's contention, therefore, fails on this count, too.

7. The appellate authority observed:

Now, even though the petitioner has raised some pertinent points by quoting several Supreme Court and High Court judgments including ruling of the Delhi VAT Tribunal on the matter which goes in his favour, there are some arguments or points that go in favour of the Revenue as well.

First relates to the judgment pronounced by the honourable Delhi High Court in the case of Commissioner of Trade Taxes v. HP India Sales Private Limited [2007] VIL 18 HC (Del.) on the same issue holding that inkjet cartridges and toner cartridges are "parts and accessories" of goods mentioned in HSN 84.71 (i.e., printers). But this judgment was given with reference to Harmonic System of Nomenclature ("HSN") of products applicable under the Central Excise Act and

the Customs Tariff Act which is not relevant in the State of Assam since entry 4 of Part B of the Second Schedule to the Assam Value Added Tax Act does not make reference to HSN which is conspicuously absent. Under the AVAT Act, 2003, reference to HSN is made only in Part C of the Second Schedule for industrial inputs and packing materials which does not include HSN 84.71 (i.e., printers). The State Legislature enjoys wide freedom in choosing the rate of tax to be imposed on the subject covered by its allotted legislative field and is therefore not bound by any system of classification of goods adopted by other bodies.

Besides, the contention of the appellant that all the States in India, which have implemented VAT and notified information technology products, have been treating inkjet cartridges and toner cartridges as "parts and accessories of computer peripherals" is not correct. The Commissioner of Commercial Taxes, U.P., u/s 59 of the VAT Ordinance, [2008] 36 NTN 50, (Commissioner decisions) held in case of Docket Care System, Lucknow, Application No. 20 of 2008 decided on February 27, 2008 that toner and cartridges are not classified under the VAT Ordinance. Hence, they are taxable at the rate of 12.5 per cent as unclassified goods under Schedule V. The dealer's contention was that toner and cartridges are integral part of printer which is part of the computer system. Hence, it should be taxable at the rate of four per cent under entry 22 of Schedule II, Part B.

8. The learned counsel for the petitioner submitted that the goods in question can be treated as parts or accessories of computer system or peripherals. As per clarification by the Commissioner also printer is a part of computer system and peripherals. The printer cannot be operated without inkjet cartridges or toner cartridges and thus the said items can certainly be treated as accessories to the printer. The judgment of the Delhi High Court in Commissioner of Trade and Taxes v. HP India Sales Private Limited [2007] VIL 18 HC (Del.) relates to the assessee itself and the entry was in identical terms. Therein it was observed:

5. A perusal of the entries shows that it is necessary to go back to HSN 84.69, 84.70 and 84.71. Learned counsel for the assessee has drawn our attention to 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(xv) of the DVAT Act, 2004.

9. The learned counsel for the petitioner also relied upon the judgment of the honourable Supreme Court in State of Uttar Pradesh and Another Vs. Kores (India) Ltd., and Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh, .

In State of Uttar Pradesh and Another Vs. Kores (India) Ltd., , it was held that typewriter ribbon was an accessory of the typewriter. Reference is made to para 17 (page 12 in 39 STC):

17. Regarding ribbon also to which the abovementioned rule of construction equally applies, we have no manner of doubt that it is an accessory and not a part of the typewriter (unlike spool) though it may not be possible to use the latter without the former. Just as aviation petrol is not a part of the aeroplane nor diesel is a part of a bus in the same way, ribbon is not a part of the typewriter though it may not be possible to type out any matter without it.

10. In Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh, it was observed that the term accessory refers to an aid or addition. Reference is made to para 10 (page 381 in 37 STC):

10. We find that the term "accessories" is used in the Schedule to describe goods which may have been manufactured for use as an aid or addition. A sense in which the word "accessory" is used is given in Webster's Third New International Dictionary as follows: "An object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else." Other meanings given there are: "supplementary or secondary to something of greater or primary importance"; "additional"; "any of several mechanical devices that assist in operating or controlling the tone resources of an organ". "Accessories" are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory of more than one kind of instrument.

11. The learned counsel for the Revenue submitted that in Part A of the Second Schedule, entry 50 provides for "printing ink excluding toner and cartridges" and thus expression toner and cartridges has been expressly used wherever so intended and on that ground the goods in question should be treated as falling the residue entry.

12. After due consideration, we are of the view that the question has to be answered in favour of the assessee. The items in question are integral part of printer which undisputedly is covered by entry 3. Thus, we are in agreement with the view taken by the Delhi High Court. Principle laid down in judgments of the honourable Supreme Court about interpretation of "accessory" also lends support to the contention of the assessee.

13. As regards the contention raised on behalf of the Revenue that toners and cartridges have been specifically used in Part A, for exclusion from entry 50, and the same could not be impliedly included under entry 4 of Part B of the Second Schedule, we are of the view that scope of entry 4 of Part B of the Second Schedule is much wider. While exclusion may be considered necessary from printing ink in entry 50 of Part A (Part A deals with "general" goods), specific mention thereof may not be necessary in general and wide entry in entry 4 of Part B--parts and accessories of computer systems and peripherals (Part B deals with IT goods).

14. It is settled that a fiscal entry is to be given a common sense meaning as understood by persons dealing with such goods and not any technical meaning. (Filterco and Another Vs. Commissioner of Sales Tax, Madhya Pradesh and Another,), Applying this test, ink of the printer has to be held to be its accessory, in absence of any compelling reason. Accordingly, we answer the question in favour of the assessee and allow the writ petitions in above terms. The assessments may now be revised accordingly.