

**GST/CST & VAT: Tamil Nadu VAT - Where assessee was dealing in Carbon papers, Typewriter Ribbon, Duplicate Ink, etc., items toner cartridges and ink cartridges would fall under Entry No. 18(1) of Part B of First Schedule of Tamil Nadu General Sales Tax Act and were exempted from levy of tax**

■ ■ ■

**[2018] 90 taxmann.com 266 (Madras)**

**HIGH COURT OF MADRAS**

**Kores India Ltd.**

**v.**

**State of Tamil Nadu\***

**S. MANIKUMAR AND R. PONGIAPPAN, JJ.**

**T.C. (R) NO 54 OF 2017**

**C.M.P NO. 20066 OF 2017†**

**DECEMBER 21, 2017**

**Classification of goods - Section 3H of the Tamil Nadu General Sales Tax Act, 1959 - Toner cartridges and ink cartridges - Assessee, a dealer in Carbon Papers, Typewriter Ribbon, Duplicate Ink, etc., claimed that sales turnover of toner cartridges and ink cartridges was exempted from levy of tax under section 3H as per G.O. Ms. No. 82 CT (B2), dated 1-7-2002 - Whether items toner cartridges and ink cartridges would fall under Entry No. 18(1) of Part B of First Schedule of Tamil Nadu General Sales Tax Act and were exempted from levy of tax - Held, yes [para 7][In favour of assessee]**

**Circulars and Notifications : G.O. Ms. No. 82 CT (B2), dated 1-7-2002, Notification No. II(2)/CT/568/(f-8)/2002, dated 1-7-2002**

## **FACTS**

---

- The assessee, a dealer in Carbon Papers, Typewriter Ribbon, Duplicate Ink, etc., claimed that sales turnover of toner cartridges and ink cartridges was exempted from levy of tax under section 3H as per G.O. Ms. No. 82 CT (B2), dated 1-7-2002.
- The Assessing Authority treated toner cartridges and ink cartridges as computer consumables and held that the computer consumables mentioned in Entry No. 18(1) of Part B of First Schedule of Tamil Nadu General Sales Tax Act, 1959 were not covered in G.O. Ms. No. 82 CT (B2), dated 1-7-2002 and Notification No. II(2)/CT/568/(f-8)/2002, dated 1-7-2002. He accordingly levied tax on the turnover of toner cartridges and ink cartridges under section 3H.
- On appeal, the assessee contended that the goods, namely, computer printer cartridges (ink cartridges and toner cartridges) fell under Entry No. 18(1) of Part B of First Schedule of the Act and in terms of G.O. Ms. No. 82 CT (B2), dated 1-7-2002 and Notification No. II(2)/CT/568/(f-8)/2002, dated 1-7-2002 all items falling under Entry No. 18(1) of Part B of First Schedule were exempted from the levy of tax under section 3H. While doing so, the Government of Tamil Nadu had not made any discrimination in or among the computer parts and it was categorically stated that the goods falling under Entry No. 18(1) of Part B of First Schedule of the Act were

wholly exempted from the levy of tax under section 3H. Hence it was eligible to exemption on this part of the turnover.

- The First Appellate Authority, after verification of records and submission made by the assessee, allowed the appeal by setting aside the levy of tax under section 3H.
- The Tribunal allowed the revenue's appeal in respect of disputed turnover of toner cartridges and ink cartridges and there by restored the order of the Assessing Authority.
- On revision:

## **HELD**

---

- In view of the decision of the Division Bench of the Madras High Court rendered in the case of *Canon India (P.) Ltd. v. State of Tamil Nadu* [W.P. No. 4042 of 2008, dated 17-7-2018] which is squarely applicable to the instant case, the revision filed by the assessee deserved to be allowed. The items toner cartridges and ink cartridges would fall under Entry No. 18(1) of Part B of First Schedule of the Act and were exempted from levy of tax in terms of G.O. Ms. No. 82 CT (B2), dated 1-7-2002 and Notification No. II(2)/CT/568/(f-8)/2002, dated 1-7-2002. [Para 7]

## **CASE REVIEW**

---

*Canon India (P.) Ltd. v. State of Tamil Nadu* [W.P. No. 4042 of 2008, dated 17-7-2013] (para 7) followed.

## **CASES REFERRED TO**

---

*Canon India (P.) Ltd. v. State of Tamil Nadu* [W.P. No. 4042 of 2008, dated 17-7-2013] (para 4).

**P.V. Ravikumar** for the Petitioner. **Kanmani Annamalai**, Addl. Govt. Pleader (Taxes) for the Respondent.

## **ORDER**

---

**S. Manikumar, J.** - Tax Case Revision No.54 of 2017, is filed against the order in S.T.A.No.33 of 2011, dated 16.05.2014, on the file of the Sales Tax Appellate Tribunal (Main Bench) Chennai.

**2.1** Short facts leading to the Tax Case Revision are that the petitioner, Tvl.Kores India Ltd, is a dealer in Carbon Papers, Typerwriter Ribbon, Duplicate Ink etc, Chennai 02 and assessed to tax on a total and taxable turnover of Rs. 15,71,30,569/- and Rs. 7,61,32,830/- respectively, under the Tamil Nadu General Sales Tax Act 1959, for the year 2004-2005, by the Assessing Officer, vide order dated 02.06.2006. Subsequently, it was noticed by the Assessing Officer that sales turnover of toner cartridges and ink cartridges to a tune of Rs. 8,09,97,739/- was granted exemption, in the original assessment order and exemption already granted on this turnover was revoked by the Assessing Officer, for the reason that the item of toner cartridges and ink cartridges were not eligible for exemption from resale tax, as per G.O.Ms.No.82 dated 01.07.2002.

**2.2** Aggrieved by this order, the petitioner filed W.P.No.2229/2008 and M.P.No.1/2008 and vide order dated 28.01.2008, a direction was given to the Assessing Officer to consider the objections filed by the dealer dated 31.12.2007 and if requested, give a personal hearing and pass final order thereafter, within a period of 4 weeks from the date of receipt of the order.

**2.3** In the re-assessment order dated 30.10.2009, the Assessing Authority, after receipt of objections from the petitioner, revised the assessment on the turnover of Rs. 8,09,97,739/- taxable at 1% under section 3-H of the Tamil Nadu General Sales Tax Act, 1959 for the reason, the item toner cartridges and ink cartridges were held as computer consumables and the computer consumables mentioned in sub item(i) of item 18 are not covered, in the notification issued dated 01.07.2002.

**2.4** Aggrieved by this order, the petitioner filed an appeal before the first Appellate Authority contending inter alia that the goods, namely computer printer cartridges (Ink cartridges and toner cartridges under entry 18(1) Part B of First Schedule to the TNGST Act, 1959 and in terms of G.O.Ms.No.82 CT (B2) dated 01-07-2002 and Vide Notification No. II (2)/CT/568/(f-8)/2002 Gazette dated 01.07.2002, all items falling under sub-item (i) of item 18, Part B of First Schedule, are exempted from the levy of tax under Section 3H of the TNGST Act. Assessee further contended that while doing so, the Government of Tamil Nadu have not made any discrimination in or among the computer parts and it was categorically stated that the goods falling under 18(i) of Part B of First Schedule of TNGST Act, 1959, are wholly exempted from the levy of tax under 3H of TNGST Act. Hence, the assessee prayed to grant exemption on this part of the turnover. In relation to the levy of penalty u/s 12(3)(b) assessee contended that levy is not warranted as the explanatory notes to the very same proviso states that the levy of penalty under clause (b) of Section 12(3) cannot be levied, if the resulting tax balance determined is due to, additions to the turnover as per books of accounts made by the assessing authority, without any reference to any specific concealment of turnover from the accounts; any turnover estimated by the assessing authority with reference to any specific concealment of any turnover from the accounts; assessee submitted that assessment has been made based on the turnover reported both in books of accounts and returns. Hence, he prayed for deletion of penalty also.

**2.5** After verification of records and submission made by the petitioner, the Appellate Deputy Commissioner (CT) IV (FAC), Chennai, allowed the appeal, by setting aside the levy of tax at 1% under Section 3H and also deleted the penalty under Section 12(3)(b) of the Act vide proceedings in A.P.No.3 of 2010. Aggrieved over passed by the Appellate Deputy Commissioner (CT) IV (FAC), State of Tamil Nadu represented by Joint Commissioner (CT), Chennai (East) Division preferred an appeal before the Sales Tax Appellate Tribunal, Chennai, disputing the relief of tax under Section 3H at 1% on re-sales turnover of computer toner cartridges granted by the First Appellate Authority. The Sales Tax Appellate Tribunal vide order in S.T.A.No.33/2011 dated 16-05-2014, allowed the state appeal, in respect of the disputed re-sale turnover of Rs. 8,09,97,739/- at 1% and there by restored the revisional order of the assessing authority.

**3.** Instant Tax Case Revision is raising on the following substantial questions of law:—

"(iii) Whether the tribunal was justified in allowing a disputed turnover of Rs. 8,09,97,739/- when the Appellate Depute Commissioner had given his finding that "computer consumables including DAT tapes, print ribbon, printer cartridge taps and computer cleaning ink. There as no separate entries for computer consumables. Computer consumables are part and parcel of computer, without consumables cannot get print out and it cannot readable. The Madras High Court (Madurai Bench) has also held that the consumables are spares of computers"

(iv) Whether the tribunal was justified in allowed a re-sale turnover of Rs. 8,09,97,739/- at 1% under Section 3H of TNGST Act 1959 without appraising the contents of G.O.Ms.No.82 CT (B2) dated 01.07.2002 and vide notification No. II (2)/CT/568(f-8)/2002 dated 01.07.2002?"

**4.** Inviting attention to a decision of the Hon'ble Division Bench of this Court in W.P.No.4042 of 2008, W.P.Nos.20301,20303 to 20310 of 2009, W.P.No.25123 of 2009, dated 17.07.2013, in the matter of *Canon India (P.) Ltd. v. State of Tamil Nadu* Through Secretary, Ministry of Education and Commercial Taxes, Commercial Taxes Department, Secretariat, Chennai and others, dated 17.07.2013, Mr. P.V.

Ravikumar, learned counsel for the petitioner, submitted that one of the question of law considered therein, whether this Court should delve into a question, as to whether ink jet cartridges and toner cartridges are accessories to printer and whether they would fall within Entry 22 & 24 of serial No.68 ins part B of First Schedule of the TNVAT, Act 2006, attracting 4% VAT. He further submitted that the abovesaid decision, is squarely applicable to the facts on hand.

5. Heard Mr. Kanmani Annamalai, learned Additional Government Pleader (Taxes), made submissions to sustain the order passed by the Tribunal.

6. At paragraph Nos.32 to 43, in *Canon India (P.) Ltd. (supra)*. Through Secretary, Ministry of Education and Commercial Taxes, Commercial Taxes Department, Secretariat, Chennai and others, a Hon'ble Division Bench of this Court, held as follows:—

"32. The First schedule to the Act specifies the rate of tax for the goods described therein. The First Schedule consist of three parts, namely, Part A: goods which are taxable at the rate of 1%, Part B: goods, which are taxable at the rate of 5% and Part C: the goods which are taxable at the rate of 14.5%. Part B deals with goods, which are taxable at 5% (rate of tax increased from 4% to 5% from 12.07.2011). Serial No.68 of Part B and Entries 22 and 24 would be relevant for the purpose of deciding the cases on hand.

Serial No.68, Information Technology Products as notified by the Government, Entry 22 Computer Systems and Peripherals, Electronic diaries;

- (a) Computer systems, peripherals and parts
- (b) Electronic diaries

Entry 24 Parts and Accessories of goods mentioned in serial Nos.21, 11,22 & 27.

33. In terms of the above entries computer systems, peripherals and parts, and parts and accessories of computer systems, peripherals and parts attract 5% tax. Peripherals has not been defined under the Act.

34. In *Commissioner of Central Excise, Mumbai v. CMS Computers Private Limited* [2005-TIOL-57-SC-CX-LB], was an appeal against the judgment of the Tribunal wherein, the assessee was issued show cause notice by the department claiming that monitors and printers were parts of computers and required to be included in the value of computers and if such value to be included, the assessee was not entitled to the benefit of an exemption notification. The Hon'ble Supreme Court held that monitors or printers were peripheral items, which may be required along with a computer and is not an essential part of the computer and its value cannot be included in the value of computer. The operative portion of the judgment reads as follows:-

4. It appears to us that a monitor or a printer is not an essential part of the computer. It is a peripheral item which may be required along with a computer.

We are unable to accept the submission that by virtue of Chapter Note 5 to Chapter 84 a monitor or printer becomes an essential part of a computer. By virtue of this Chapter Note a monitor and/or a printer may also be classifiable under the same tariff heading. However, merely because the tariff entry may also include a monitor or printer would not lead to the conclusion that a monitor or printer is an essential part of a computer. All that this Chapter Note indicates is that not only the computer but a monitor and a printer are also excisable products. But the monitor and/or printer will be excisable in the hands of their manufacturer. The respondents do not manufacture the monitor or the printer. On facts, it could not be disputed that in approximately 70% of the cases monitors and printers are not supplied along with the computer sold by the respondents. Thus, it cannot be

concluded that respondents sell their computer as a unit which include a monitor and a printer. As a monitor and printer are not essential parts of the computer their value cannot be included in the value of computer. We, however, clarify that situation may be different where a manufacture sells a computer with a monitor and a printer as a unit.

35. In the light of the above decision of the Hon'ble Supreme Court, printer has to be treated as a peripheral to a computer system. In terms of Entry 22 in serial NO.68 of Part B of First Schedule Computer Systems and Peripherals are chargeable to 5% tax. In terms of Entry 24 of serial NO.68 Parts and Accessories of Computer Systems and Peripherals also attract tax at 5%. The product in question in these cases are ink jet cartridges and toner cartridges. Undoubtedly, ink jet cartridges and toner cartridges are parts and accessories of a printer, which has been held to be a peripheral to a computer system by the Hon'ble Supreme Court. Therefore, those parts and accessories of a printer should also attract the same rate of tax, namely, 5%. This conclusion is in consonance with the statutory provision, namely, proviso to sub-section (2) of Section 3. In terms of the said proviso all spare parts, components and accessories of such goods shall also be taxed at the same rate, as that of the goods if such spare parts, components and accessories are not specifically enumerated in the First Schedule and made liable to tax under that schedule.

36. Admittedly, ink jet cartridges and toner cartridges have not been specifically enumerated in serial No.68 of Part B of the First Schedule. In such situation, the cartridges being parts and accessories of a peripherals, namely a printer, they should also be liable to tax at the same rate as that of the goods enumerated in Entry 22 and 24. It was contended by the respondent that the cartridges are consumables. On a careful perusal of the entries giving description of goods in Part B of First Schedule, we find that the term "consumables" has not been used in the VAT Act. Therefore, even if such term was used in the erstwhile TNGST Act, that can hardly be a reason to treat these cartridges as "consumables" under the VAT Act and resort to residuary entry No.69 of schedule C, which deals with any other goods not specified in any of the schedules.

37. It has to be seen as to whether the department is right in claiming that the cartridges are chargeable to tax at 14.5% under the residuary Entry No.69 of C. The Hon'ble Supreme Court in the case of *Bharat Forge and Press Industries (supra)* considered the very question as to when the department can claim that goods are chargeable to duty as per a residuary entry. It was held that unless the department can establish that the goods in question can by no conceivable process of reasoning be brought under any of the tariff items then and then only they can resort to a residuary item. Therefore, in the instant case, the stand taken by the revenue that the rate of tax shall be as per the residuary Entry 69 is unacceptable.

38. It is the submission of the learned Additional Advocate General that serial No.68 of Part B of First Schedule would not apply to printers as they are not Information Technology Products and the printer does not answer the definition of Information Technology as defined in the Law Lexicon and Wikipedia. It is to be noted that serial No.68 of Part B deals with Information Technology Products as notified by the Government. Therefore, the Information Technology Products which have been notified by the Governments shall fall under serial No.68. If we are to accept the submission of the learned Additional Advocate General, then several of the products notified under serial No.68 do not answer the definition of Information Technology as given in the Law Lexicon. By way of illustration, the following products also find place in serial No.68, namely, micro phones, multimedia speakers, LCD Panels, LED Panels, Electronic Calculators, Switches and uninterrupted power supply. Therefore, while interpreting the scope of serial No.68 of Part B, it has to be noted that it is not sufficient for a product to be an Information Technology Product to fall within the entries in serial No.68, but the requirement being it should be notified by the Government to be an Information Technology Product to fall under serial No.68 of Part B.

Therefore, the plea raised in this regard is misconceived.

39. As noticed above, the Delhi High Court in the case of Symphony Enterprises, referred supra, has rendered a clear finding that toners and cartridges are parts and accessories to computer systems. The functioning of these cartridges was explained to us from which it appears that ink cartridge is a sophisticated Engineering design to provide and regulate back pressure, which is essential to perform its job of delivering the right amount of ink to the print-head nozzle and toner cartridge, which is fitted in laser jet printer generates laser beam which acts on the photo sensitive drum. Thus, the ink jet cartridge/toner cartridge is a part and accessory to a printer, which has been held to be a peripheral to a computer system.

40. In *State of U.P. vs. Kores (India) Limited*, [(1977) 39 STC 8] the question which arose for consideration is whether ribbon is an accessory or a part of the typewriter. It was held that the ribbon is an accessory and not a part of the typewriter unlike spool. The Hon'ble Supreme Court held that the description of the class of goods which are to be taxed under an Act have to be construed in the sense in which they are popularly understood by those who deal in them and who purchase and use them.

41. In *Annapurna Carbon Industries Co. v. State of A.P.* [(1976) 37 STC 378] the question which arose for consideration is whether sales of arc-carbons known as cinema arc-carbons would fall under Entry No.4 of First Schedule of the A.P., General Sales Tax Act, which entry covered cinematographic equipment, including cameras, projectors and sound recording and reproducing equipment, lenses, film and parts and accessories required for use therewith. While answering the question in favour of the assessee, the Hon'ble Supreme

Court held as follows:-

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.

42. After due consideration, we are of the view that the question has to be answered in favour of the petitioners/assessee and we hold that ink jet cartridges and toner cartridges are parts and accessories of printer which is a peripheral to a computer system and would be covered under Entry Nos.22 & 24 of serial No.68, Part B of First Schedule to the TNVAT Act.

43. In the result, the writ petitions are allowed holding that ink jet cartridges and toner cartridges are parts and accessories of printer which is a peripheral to a computer system and would be covered under Entry Nos.22 & 24 of serial No.68, Part B of First Schedule to the Tamil Nadu Value Added Tax Act, 2006. No costs. Consequently, connected miscellaneous petitions are closed."

7. Going through the material on record, we are of the view that the abovesaid decision is squarely applicable to the case on hand. Following the same, instant Tax Case Revision is allowed. No costs. Substantial questions of law 3 and 4 are answered in favour of the assessee. Consequently, connected

Civil Miscellaneous Petition is closed.

s.k. jain

---

\*In favour of assessee.

†Revision arising out of order of Tribunal in STA No. 33 of 2011, dated 16-5-2014.