

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



S.B. Sales Tax Revision / Reference No. 182/2017

M/s Compuage Infocom Limited D-213, Kalidas Marg, Bani Park,
Jaipur

-----Petitioner

Versus

The Assistant Commissioner, Rajasthan, Anti-Evasion-I Kar
Bhawan, Ambedkar Bhawan, Jaipur

-----Respondent

Connected With

S.B. Sales Tax Revision / Reference No. 183/2017

M/s Compuage Infocom Limited D-213, Kalidas Marg, Bani Park,
Jaipur

-----Petitioner

Versus

The Assistant Commissioner, Rajasthan, Anti-Evasion-I Kar
Bhawan, Ambedkar Bhawan, Jaipur

-----Respondent

S.B. Sales Tax Revision / Reference No. 184/2017

M/s Compuage Infocom Limited D-213, Kalidas Marg, Bani Park,
Jaipur

-----Petitioner

Versus

The Assistant Commissioner, Rajasthan, Anti-Evasion-I Kar
Bhawan, Ambedkar Bhawan, Jaipur

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S.B. Sales Tax Revision / Reference No. 185/2017

M/s Compuage Infocom Limited D-213, Kalidas Marg, Bani Park,
Jaipur

-----Petitioner

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S.B. Sales Tax Revision / Reference No. 186/2017

M/s Compuage Infocom Limited D-213, Kalidas Marg, Bani Park,
Jaipur

-----Petitioner

Versus

The Assistant Commissioner, Rajasthan, Anti-Evasion-I Kar
Bhawan, Ambedkar Bhawan, Jaipur

-----Respondent

S.B. Sales Tax Revision / Reference No. 187/2017

M/s Compuage Infocom Limited D-213, Kalidas Marg, Bani Park,
Jaipur

----Petitioner

Versus

The Assistant Commissioner, Rajasthan, Anti-Evasion-I Kar
Bhawan, Ambedkar Bhawan, Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 75/2018

Rashi Peripherals Pvt. Ltd., Having Its Address At B-22
Sudarshanpura Industrial Area, Jaipur 302006 Through Its
Authorized Signatory And Branch Head Shri Satish Gupta S/o
Shri Radhey Shyam Gupta

----Petitioner

Versus

Commercial Tax Officer, Anti-Evasion, Rajasthan, Circle-I, Jaipur
Having Its Address At Kar Bhawan, Ambedkar Circle, Jaipur In The
State Of Rajasthan

----Respondent

S.B. Sales Tax Revision / Reference No. 76/2018

Rashi Peripherals Pvt. Ltd Having Its Address At B-22,
Sudarshanpura Industrial Area, Jaipur 302006, Through Its
Authorized Signatory And Branch Head Shri Satish Gupta S/o
Shri Radhey Shyam Gupta.

----Petitioner

Versus

Commercial Tax Officer, Anti Evasion Rajasthan, Circle-I, Jaipur
Having Its Address At Kar Bhawan, Ambedkar Circle, Jaipur In The
State Of Rajasthan

----Respondent

S.B. Sales Tax Revision / Reference No. 77/2018

Rashi Peripherals Pvt. Ltd. Having Its Address At -22,
Sudarshanpura Industrial Area, Jaipur 302006 Through Its
Authorized Signatory And Branch Head Shri Satish Gupta S/o
Shri Radhey Shyam Gupta

----Petitioner

Versus

Commercial Tax Officer, Anit Evasion Rajasthan, Circle-I, Jaipur
Having Its Address At Kar Bhawan, Ambedkar Circle, Jaipur In
The State Of Rajasthan

----Respondent

S.B. Sales Tax Revision / Reference No. 78/2018

Rashi Peripherals Pvt. Ltd Having Its Address At B-22,
Sudarshanpura Industrial Area, Jaipur 302006, Through Its
Authorized Signatory And Branch Head Shri Satish Gupta S/o

Shri Radhey Shyam Gupta.

-----Petitioner

Versus

Commercial Tax Officer, Anti-Evasion Rajasthan, Circle-I, Jaipur
Having Its Address At Kar Bhawan, Ambedkar Circle, Jaipur In
The State Of Rajasthan

-----Respondent

S.B. Sales Tax Revision / Reference No. 79/2018

Rashi Peripherals Pvt. Ltd., Having Its Address At B-22,
Sudarshanpura Industrial Area, Jaipur 30206 Through Its
Authorized Signatory And Branch Head Shri Satish Gupta S/o
Shri Radhey Shyam, Gupta

-----Petitioner

Versus

Commercial Tax Officer, Anti Evasion, Rajasthan, Circle,-I, Jaipur
Having Its Address At Kar Bhawan, Ambedkar Circle, Jaipur In
The State Of Rajasthan

-----Respondent

S.B. Sales Tax Revision / Reference No. 80/2018

Rashi Peripherals Pvt. Ltd., Having Its Address At B-22,
Sudarshanpura Industrial Area, Jaipur 3020, Through Its
Authorized Signatory And Branch Head Shri Satish Gupta S/o
Shri Radhey Shyam Gupta

-----Petitioner

Versus

Commercial Tax Officer, Anti-Evasion, Rajasthan, Circle-I, Jaipur
Having Its Address At Kar Bhawan, Ambedkar Circle, Jaipur In
The State Of Rajasthan

-----Respondent

S.B. Sales Tax Revision / Reference No. 4/2019

M/s Hindustan Business Computers, 5-A Tilak Marg Jaipur (Raj)

-----Petitioner

Versus

Commercial Taxes Officer, Anti-Evasion Rajasthan Circle-I Jaipur

-----Respondent

S.B. Sales Tax Revision / Reference No. 5/2019

M/s Hindustan Business Computers, 5-A Tilak Marg Jaipur (Raj)

-----Petitioner

Versus

Commercial Taxes Officer, Anti-Evasion Rajasthan Circle-I Jaipur

-----Respondent

S.B. Sales Tax Revision / Reference No. 6/2019

M/s Hindustan Business Computers, 5-A Tilak Marg Jaipur (Raj)

----Petitioner

Versus

Commercial Taxes Officer, Anti-Evasion Rajasthan Circle-I Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 9/2019

M/s Hindustan Business Computers, 5-A Tilak Marg Jaipur (Raj)

----Petitioner

Versus

Commercial Taxes Officer, Anti-Evasion Rajasthan Circle-I Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 10/2019

M/s Hindustan Business Computers, 5-A Tilak Marg Jaipur (Raj)

----Petitioner

Versus

Commercial Taxes Officer, Anti-Evasion Rajasthan Circle-I Jaipur

----Respondent

S.B. Sales Tax Revision / Reference No. 30/2019

M/s Hindustan Business Computers, 5-A, Tilak Marg, Jaipur (Raj.)

----Petitioner

Versus

Commercial Taxes Officer, Anti-Evasion, Commercial Tax, Circle-I, Jaipur

----Respondent

For Petitioner(s) : Mr. V. K. Gogra,
Mr. Siddharth Ranka with
Mr. Muzaffar Iqbal,
Mr. Saurabh Harsh and
Ms. Apeksha Bapna

For Respondent(s) : Mr. Punit Singhvi with
Mr. Ayush Singh

HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

Reportable

Reserved on: 12/04/2023

Pronounced on: 30/05/2023

1. The present Sales Tax Revisions / References (for short "STRs") were admitted on following questions(s) of law:-

IN STR NOS. 182-187/2017

"Whether the LAN Connection Cable (CAT-5, CAT-6) is taxable under S. No. 3 or 24 of Part A of Entry No. 65 of Schedule-IV or at General Rate as per Schedule-V appended to the Rajasthan Value Added Tax Act, 2003 (for short "RVAT Act")?"

In STRs 75-80/2018, STRs 4-6/2019, STRs 9-10/2019, and STR 30/2019:

"(i) Whether the Id. Tax Board was correct in law in holding that the networking products such as Routers, Switches, Hubs, LAN Cards and LAN cables etc. sold by the petitioner are not computer peripherals hence was taxable @ 12.5% / 14% and not @ 4% / 5%.

(ii) Whether the Id. Tax Board was correct in law while dismissing the appeal in restricting its findings/reasons only to the extent of CAT-5 and CAT-6 cables and not giving any findings/reasons whatsoever in respect of networking products such as Routers, Switches, Hubs, LAN Cards sold by the petitioner?"

2. Since the common question of classification of 'CAT-5 / CAT-6 cable' is involved in all these STRs, with the consent of the parties, all these STRs were heard together.

3. Learned counsels for the petitioner-assessee submits that the petitioner/companies were engaged in the business of selling computer and computer related products, including the networking cables (CAT-5 / CAT-6) whose primary function is data transmission. Learned counsels for the petitioner-assessee contends that the petitioner-assessee was rightly classifying the networking cables as 'computer peripherals' and accordingly discharging its VAT liability by treating the same as computer system and peripherals, as classifiable under Entry 3 of Part A of

Schedule IV of the RVAT Act. Learned counsels further contends that all the authorities below have erred in law by classifying the networking cables under the residuary head and not the specific head and therefore erroneously imposed additional tax and interest upon the petitioner-assessee. In support of their contention that CAT-5 / CAT-6 cable would form part of 'computer peripheral', learned counsel for the petitioner-assessee made the following submissions:

3.1) The first submission of learned counsels for the petitioner-assessee is that the revenue has not discharged its onus to prove that CAT-5 / CAT-6 cables would not be included in the broad and expansive definition of 'computer peripherals'. It is submitted that neither any expert / technical opinion was sought nor any evidence was brought on record to prove their point. It is submitted that as per settled position of law, onus or burden to show that a product falls within a particular tariff item is always on the revenue and since the revenue has failed to discharge its onus, the reference ought to be allowed in the favour of the petitioner-assessee. Reliance in this regard is placed on Apex Court judgments of **Union of India vs. M/s Garware Nylons Ltd.** reported in **(1996) 10 SCC 413**, **Voltas Ltd. vs. State of Gujarat** reported in **[(2015) 80 VST 12 (SC)]**, **Commissioner of Central Excise vs. Hindustan Lever Ltd.** reported in **(2015) 10 SCC 742**, **Commissioner of Central Excise, Calcutta vs. Sharma Chemical Works** reported in **[(2003) 132 STC 251 (SC)]**, **M/s Hindustan Poles Corporation Limited vs. Commissioner of Central Excise** reported in **[(2006) 145 STC**

625 (SC)] and judgment of Division Bench of this Court in the case of **State of Rajasthan and Ors. vs. Deys Medical Stores Ltd. and Ors.** (DBCWP No. 2139/1999 decided on 27.07.2007).

3.2) The second submission of learned counsels for the petitioner-assessee is that the Revenue as well as the lower adjudicating authorities have given an extremely restrictive meaning to the term 'computer peripherals' to only include input and output devices, which is contrary to the judgments of this Court in the case of **M/s Kores (India) Limited & Ors. vs. The Assistant Commissioner** (S.B. STR No. 24/2015 decided on 19.02.2016), **M/s Sharp Business Systems (India) Ltd. vs. The Assistant Commissioner** (S.B. STR No. 185/2016 decided on 26.05.2017); judgments of Madras High Court in the case of **State of Tamil Nadu vs. CMC Limited** reported in **[(2014) 75 VST 413 (Mad.)]**, **Canon India Pvt. Ltd. vs. State of Tamil Nadu** reported in **[(2015) 80 VST 483 (Mad.)]** and judgment of Delhi High Court in the case of **Ricoh India Limited vs. Commissioner** reported in **[(2012) 52 VST 49 (Delhi)]**.

3.3) The third submission of learned counsels for the petitioner-assessee is that it is an established cannon of classification that a specific entry would override a general entry. Reliance in this regard is placed on Apex Court judgments of **Commissioner of Commercial Tax, U.P. vs. A.R. Thermosets (Pvt.) Ltd.** reported in **(2016) 16 SCC 122**, **State of Maharashtra vs. Bradma of India Ltd.** reported in **[(2005) 140 STC 17 (SC)]**, **Hindustan Poles Corporation vs. Commissioner of Central Excise, Calcutta** reported in **[(2006)**

145 STC 625 (SC)], and **Krishi Utpadan Mandi Samiti and Ors. vs. Ved Ram** reported in **[2012 (277) ELT 299 (SC)]**. It is stated that a special entry must prevail over the general entry and that the residuary clause can be invoked only if the department can establish that the goods in question can, by no conceivable process of reasoning, be brought under any of the tariff items. It is contended that since the goods in question, i.e. CAT-5 / CAT-6 cables, are primarily used as an ancillary computer product, the same would be included in the broad category of 'computer peripheral'.

3.4) The fourth submission of learned counsel for the petitioner-assessee is that as the CAT-5 and CAT-6 cables are primarily and predominantly used to physically connect the computer system to a network, the same would necessarily have to be included in the broad definition of 'computer peripheral', as per the common parlance test and end usage test. Reliance in this regard is placed on Apex Court judgment of **Atul Glass Industries (Pvt.) Ltd. and Ors. vs. Collector of Central Excise and Ors.** reported in **(1986) 3 SCC 480** and judgment of this Court in the case of **Assistant Commissioner vs. M/s Voltas Limited** (S.B. STR No. 232/2020 decided on 30.11.2022). It is contended that merely because CAT-5 and CAT-6 cables are also used for other applications like telecommunication, cable network or CCTV cameras etc., the same would not preclude them from being covered by the definition of 'computer peripherals', especially when it is an admitted and undisputed fact that CAT-5 /

CAT-6 cables are essential to physically connect the computer system to a network.

3.5) The fifth submission of learned counsel for the petitioner-assessee is that the Entry No. 3 of Part A of Schedule IV of the RVAT Act was subsequently amended in 2013 to specifically include 'networking items for LAN and WAN' and similarly Entry No. 24 of Part A of Schedule IV of the RVAT Act was also amended in 2013 to specifically include CAT-5 and CAT-6 cables. It is contended that the said amendment made it clear that the intention of the legislature was always to include the CAT-5 and CAT-6 cable in Part A of Schedule IV of the RVAT Act. It is submitted that it is a settled position of law that subsequent legislation can be looked at in order to see what is the proper interpretation to be put upon the earlier legislation when the earlier legislation is found to be obscure or ambiguous or capable of more than one interpretation. Reliance in this regard is placed on Apex Court judgments of **Pappu Sweets and Biscuits vs. Commissioner of Trade Tax U.P Lucknow** reported in **[(1998) 111 STC 425 (SC)]**, and **V.M. Salgaocar and Bros. Pvt. Ltd. vs. Commissioner of Income Tax** reported in **(2000) 5 SCC 373**.

3.6) Learned counsel for the petitioner-assessee have also relied upon the IT & ITES Policy of 2007, introduced by the State of Rajasthan, wherein as per para 2.11.2, VAT on all IT products was rationalised at the minimum rate of 4%. Similarly, learned counsels for the petitioner-assessee have also relied on Chief Minister's finance speech made while introducing State Budget for

the year 2013-14. The relevant part of the budget speech is reproduced as under:

“297 कर दर संबंधी अनुसूचियों में वर्णित वस्तुओं के विवरण से उत्पन्न हो रहे व्यावहारिक कठिनाइयों के निराकरण के उद्देश्य से कतिपय वस्तुओं यथा computer related items, cash dispensers, loaders, processed meat, poultry पर कर दर स्पष्ट किया जाना प्रस्तावित है।”

Relying upon the above, learned counsels for the petitioner- assessee contends that the intention of the Government was always to impose VAT @ 4% / 5%. It is further contended that the Government acknowledged the difficulties faced by different assessee who were dealing with computer items and therefore sought to clarify the specific rate of VAT leviable on such items. In furtherance of the same, the Entry No. 3 and 24 of Part A of Schedule IV of the RVAT Act were amended to include networking items and CAT-5 / CAT-6 cables for which the applicable rate of tax was 4% / 5%. Learned counsels contends that the said amendment was only clarificatory in nature and was having a beneficial intent to it and therefore the benefit of the same was available retrospectively as well. In this regard, learned counsels for the petitioner- assessee have also placed reliance on Apex Court judgment of **Suchitra Components Ltd. vs. Commissioner of Central Excise, Guntur** reported in **(2006) 12 SCC 452**. Further, in support of their contention that speech made by ministers, while introducing bills/budgets, can be relied on to throw light on the object and purpose of provisions of law, learned counsels have relied on Apex Court judgment of **Kerala State Industrial Development Corporation Ltd. vs.**

Commissioner of Income Tax reported in [(2003) 259 ITR 51 (SC)].

3.7) Learned counsels for the petitioner-assessee have also relied upon judgments delivered by Hyderabad Bench of Income Tax Appellate Tribunals (for short "ITAT") in the case of **Ushodaya Enterprises Ltd. vs. ACIT** (ITA Nos. 1241/Hyd/2008 & 591/Hyd/2010; decided on 31.10.2013) reported in (2014) 41 **taxman.com 304**, judgments of ITAT Mumbai Bench in the case of **IBAHN India Pvt. Ltd. vs. DCIT-1(3)** (ITA No. 4932/Mum/2015; decided on 11.01.2016) reported in (2016) 66 **taxman.com 239** and in the case of **Deputy Commissioner of Income Tax, 2(1) vs. Datacraft India Ltd.** reported in [2011 (9) ITR(Trib) 712 (Mumbai)] in support of their contention that when any device is used as a part of the computer and its functions, then it would also be termed as computer.

4. *Per contra*, supporting the concurrent findings of the authorities below, learned counsels for the revenue submits that no question of law worth consideration arises in the present STRs. Learned counsel for the revenue submits that CAT-5 or CAT-6 cable are essentially networking cables, whose use and application is not restricted to computer networking and they are used in a wide array of services, including telecommunication, cable networks, CCTV cameras, etc. Learned counsel for the revenue contends that the authorities below have rightly restricted the definition of computer peripherals to those hardware apparatus whose usage is confined to operation of computer only. Learned counsel for the revenue further submits that the judgments relied

upon by the petitioner-assessee (supra), on the definition of computer peripheral, has been rightly distinguished by the learned Tax Board as the article under consideration in those cases were some sort of hardware equipment, whereas the present case pertains to classification of networking cables which can also be used independently of the computer for various other purposes.

5. Heard the arguments advanced by both the sides, scanned the record of the STRs and considered the judgments cited at Bar.

6. The *lis* in question pertains to classification of CAT-5 and/or CAT-6 cables for the purpose of determining the applicable rate of tax as per the RVAT Act. According to the petitioner-assessee, the CAT-5 / CAT-6 cable would fall under Entry 3 or Entry 24 read with Entry 28 of Part-A of Schedule IV to the RVAT Act, whereas as per Revenue, the CAT-5 / CAT-6 cable would fall under the residuary entry of Schedule V to the RVAT Act. The relevant entries, as amended from time to time, are reproduced as under:-

"Entry No. 3 of Part-A of Schedule IV: (As on 01.04.2006): Computer system and peripherals, electronic diaries:- 4%

Entry No. 3 of Part-A of Schedule IV (As on 01.06.2006): Computer system and peripherals, computer printers and electronic diaries:- 4%

Entry No. 3 of Part-A of Schedule IV (As on 09.03.2010): Computer system and peripherals, computer printers excluding multifunctional devices and electronic diaries:- 5%

Entry No. 3 of Part-A of Schedule IV (As on 06.03.2013): Computer system and peripherals,

networking items for LAN and WAN including wired and wireless switch, routers, modem, webcams, IP surveillance system, computer printers including multifunctional devices and electronic diaries:- 5%

Entry No. 3 of Part-A of Schedule IV (As on 09.03.2015): Computer system and peripherals excluding tablet computer known by whatever name like i-pad, e-book reader, phablet, slaste etc., networking items for LAN and WAN including wired and wireless switch, routers, modem, webcams, IP surveillance system, computer printers including multifunctional devices and electronic diaries:- 5%

Entry No. 24 of Part-A of Schedule IV (Since 01.04.2006): Optical fibre cables and joining kits and material thereof:- 4%

Entry No. 24 of Part-A of Schedule IV (As on 06.03.2013): Optical fibre cables, networking cables of different types such as Flat Cables, CAT 3 cables, CAT 5 cables, CAT 6 cables, Unshielded Twisted Pair (UTP) cables, joining kits and joining materials thereof.

Entry No. 28 of Part-A of Schedule IV (Since 01.04.2006): Parts of 1 to 27 above:- 5%

Entry No. 28 of Part-A of Schedule IV (As on 06.03.2013): Parts and Accessories (other than cover and carrying cases) of 1 to 27 above.

Entry No. 78 of Schedule V: Goods not covered in any other Schedule appended to the Act or under any notification issued under section 6 of the Act.:- 12.5% / 14% as applicable during relevant years."

7. The petitioner-assessee was self-classifying the networking cables as per the entries mentioned in Part A of Schedule IV to the RVAT Act and paying tax accordingly at the

rate of 4% / 5%. After the survey conducted by the Revenue, the differential tax, interest and penalty was imposed upon the petitioner-assessee as according to the Revenue the networking cables had to be classified in the residuary entry which attracted tax at the rate of 12.5% / 14%. The learned Tax Board upheld the levy of tax and interest but set aside the penalty. As per settled position of law, a specific entry would always trump a general entry and the burden would always be on the Revenue to prove that the goods in question would have to fall in general entry as opposed to the specific entry. From the perusal of the order(s) of the Tax Board, it appears that the decision of the learned Tax Board was based on the following factors:

- a) that the networking cables are not integral/essential to the functioning of a computer;
- b) that networking cables are not hardware equipment or apparatuses, which are generally considered as computer peripherals/computer accessories;
- c) that the networking cables are not exclusively used with computer as they have different applications independent of computers.

8. The word 'computer system' and 'peripheral' is not defined anywhere in the RVAT Act. At this juncture, it would be apt to consider the way in which it has been interpreted by different Courts. In the case of **M/s Kores (India) Limited (supra)**, Co-ordinate Bench of this Court observed as under:

"16. The Multi Function Device comprising of computer printer, fax machine, photocopier and scanner - all-in-one, with the fast technology development, is an office

equipment, which combines the aforesaid three or four devices and functions in one unit, and is largely used while attached with computer, though it may be used in some respects, as stand alone equipment, or even with or without being attached to the computer, like fax machine, as a part of it. The scanner, which produces digital image of the documents scanned can be used only with the aid of computers, if the scanned image has to be transmitted to any other destination, though such transmission can be made possible through mobile phone also, as contended by the learned counsels for the Revenue. With the technology fast developing, it is now possible to do so and use Multi Functional Device with remote sensors in the computer system or Wi-fi. Therefore, actual and physical connection with the computer may not be even necessary. The major user of the Multi Functional Devices, the taxability of which is in question before this Court, is as a computer printer and one study in this regard produced by the learned counsels for the Assesseees by the World Book Encyclopedia, indicates that typical page consumption analysis discloses that of the total output, 67% is printed, 30% is copied and 3% is faxed. The Assesseees before this Court also contended that the dominant use of Multi Functional Device in question is computer printer only, with which the documents in the computer system is printed with the help of the said equipment or machine. **The dissection or separation of the various parts of this machine to decide the taxability of rate thereof, is not called for, but if admittedly, this device can be used as computer printer also, there appears to be no justification to tax it in the Residuary Entry, ignoring the specific entry relating to computer printers and its peripherals. It is well settled legal position that the Residuary Entry can be resorted to only if the commodity in question cannot be brought under the specific entries, and this proposition, is not disputed by either side before this Court**

17. That as a matter of fact, the entry is wider, which includes not only computer printers, but computer peripherals also. This Court finds no justification in the contention raised by the learned counsels for the Revenue, that the word peripherals has to be construed narrowly to limit and include only accessories like, mouse, webcam or keyboard, as computer peripherals, to be taxed @ 4% under the said entry, and not to include therein the Multi Functional Devices"

Further, in the case of **M/s Sharp Business (India) Ltd.**

(supra), Co-ordinate Bench of this Court observed as under:-

"15. On perusal of the above and taking into consideration the entry 7, in my view, the "FM" would certainly can be said to be covered under entry 7 of Schedule-IV reproduced hereinbefore. It is a case where "FM" as noticed hereinbefore becomes operative only when there is a telephone line/connection and unless and until there is a telephone line/connection, "FM" does not operate. Therefore, it has been held to be falling in the entry 7 of Schedule-IV of the RVAT Act, and I concur with the reasoning of this court (supra). **Merely because "FM" specifically has not been included in entry 7, is no reason to infer that it will fall in Schedule-V.** Once the claim of the assessee is that it fall under entry 7 Schedule-IV, then the revenue has to bring material on record, which has not been brought on record."

Further, in the case of CMC Limited (supra), the Madras High Court observed as under:-

*"It is not in dispute that "router" is a device falling outside the main part, namely, computer and it is partially or completely dependent on the host and expands the capabilities of the computer and it does not form part of the core architecture. What are all computer peripherals have not been defined in serial No. 22 of entry 68 of Part B of the First Schedule to the TNVAT Act, 2006. Therefore, whatever goods, which are falling within the definition of "peripheral" would be entitled to such a benefit. We find that "router", from the nature of its use in conjunction with the computer as has been defined by the Appellate Deputy Commissioner and the Tribunal based on relevant computer related dictionary and data, is a peripheral of a computer. **It is also held by the Tribunal that "router" is a computer network device that transmits data from one area to another and expands the capabilities of the computer, hence, it does not form part of core computer architecture. Therefore, we find that the Appellate Deputy Commissioner as well as the Tribunal are justified in holding that the goods sold by the assessee, namely, router, is a computer peripheral, falls under serial No. 22, entry 68 of Part B of the First Schedule to the TNVAT Act, 2006.**"*

Further, in the case of **Canon India Pvt. Ltd. (supra)**, upheld by the Hon'ble Supreme Court of India, the Madras High Court held as under:-

"8. Coming to the case on hand, assuming that the other interpretation given by the lower authorities is not accepted, on a conspectus of the issue raised by the petitioner and the orders passed by the authorities below, we find that the issue that has to be decided is whether image runner-multifunction network printer is a "peripheral" of a computer or such other device having different functional capability which would fall under other entries as contended by the Department. It is seen from the order of the authorities below that the technical details of the image runner have already been submitted before the lower authorities.

9. The first issue that the petitioner has been canvassing is the predominant use of the goods in question. It is the specific plea of the petitioner before the original authority as well as before the first appellate authority that the image runner is predominantly a multi-function network printer and it performs other functions like scanning, fax, documents storage and copying. Besides the facility of network printing, the add on features of scanning, fax, photocopying make the goods a multi-function device.

10. The fact that the goods in question work in conjunction with a computer, personal, mini, mainframes and laptops of analog and digital varieties is not in dispute. It is also not in dispute that this equipment is an input and output device. The printer and the scanner of different kinds fall within the definition of "peripheral". If it is a standalone photocopier machine or fax machine, then the Department would have a case and counter. **Photocopying is not the primary function of the equipment in question, as it works in conjunction with the computer.** The distinction is evident from the reading of entry 18(i) of Part B of Schedule I and entry 14(iv) of Part D of Schedule I of the TNGST Act. Peripherals in relation to computer personal, mini, mainframes and laptops of analog and digital varieties would fall under entry 18(i) of Part B of Schedule I, whereas electronic instruments including cash registers, tabulating and calculating machines, electronic duplicating machines, reprographic copiers including duplicators, xerox and photo copying machines and any other electronic apparatus for obtaining duplicate copies fail under entry 14(iv) of Part D of Schedule I."

Further, in the case of **Ricoh India Limited (supra)**, the Delhi

High Court held as under:

"15. The question, therefore, which is raised and has to be answered, is whether the multi functional machines or printers are computer peripherals or not? The term

"peripheral" has not been defined in the VAT Act and, therefore, has to be given its natural and common sense meaning. A computer mainly consists of Central Processing Unit, which cannot operate and function without peripherals like monitor, keyboard, printer etc. Some of the peripherals may be mounted or housed in the computer cabinet itself like Hard Disc, CD ROM, Mic etc. Sometime peripherals can be separate and have to be attached to the Central Processing Unit. The term "peripheral" has been defined in Oxford Dictionary to mean as under:-

'(of a device) able to be attached to and used with computer, though not an integral part of it'

16. *A multi functional machine can be a computer peripheral, if its principal or sole purpose is to be attached and function as a computer ancillary. A multi functional machine will be and qualify as a computer peripheral when its main/predominant purpose is to scan documents, load data or work as an input device of the computer or work as an output device to take printouts etc. from the computer. At the same time, there can be photocopiers, whose main purpose is to copy or act as a duplicating machine to make copies of documents. Incidentally, they may also be used as a printer. This would require elucidation and examination of factual matrix in each case and the machine in question on case to case basis."*

9. From the analysis of the aforesaid judgments, it is clear that the term peripheral has been given an expansive meaning and is not restricted to input/output devices, as contended by the Revenue. It is also clear that even if the goods in question can have different applications independent of computer, the same would not preclude them from being considered computer peripheral if they are also being used in computer system to expand the capabilities of computer system.

10. The goods in question, i.e. CAT-5/CAT-6 cable, are admittedly used to connect the computer to a network as their primary function is high speed data transmission. They are essential for wired connection of a computer to a local network or to the Internet. The Revenue contends to keep the definition of

'peripheral' limited to those items that are essential to keeping the computer operational, but the Revenue has failed to consider the meaning of the word 'operational' in its different contexts. For many end users, in this day and age, it is a necessity to be able to connect their computer to a network so as to make their computer 'operational' for their usage. The connection to external network may be to local area network (LAN) or wide area network (WAN) and it may be wired or wireless. But even if it is wireless, it would have to be with aid of another device. Be that as it may, merely because the connection can also be established wirelessly would not preclude the networking cables from being included in the broad definition of 'peripheral' as they are also used with computer system to connect the computer to a network.

11. These authorities can be multiplied, as various such authorities of the Tribunals were also cited before this Court, but it is not considered necessary to reproduce and discuss all such cases in detail, especially when the learned counsels for the Revenue failed to bring out any contra view on this issue from any other High Court or the Hon'ble Supreme Court of India.

12. In the opinion of this Court, the learned Tax Board has erroneously taken a hyper technical view that since the CAT-5/CAT-6 cables don't directly fall in the category of the items mentioned in the above quoted judgments, the said judgments are distinguishable and not applicable. The learned Tax Board has erred in law by not applying the correct ratio of the above quoted judgments in their true sense.

13. Even otherwise, the order impugned of the learned Tax Board and the authorities below deserve to be quashed and set aside for the following additional reasons:-

13.1) The burden to prove that a specific product falls within a particular tariff is always on the revenue, more so when the revenue is trying to classify products in the residual entry as against the specific entry. In the instant case, the revenue has utterly failed to adduce any evidence, technical or otherwise, to substantiate its claim that CAT-5 or CAT-6 cable are not covered in Part-A of Schedule IV to the RVAT Act which specifically deals with IT Products.

13.2) As per the IT & ITES Policy 2007 also, a flat rate @ 4% was prescribed for the sale of IT related products.

13.3) The Entry No. 3 and 24 of Part-A of Schedule IV to the RVAT Act was subsequently amended to specifically include "networking items" in Entry 3 and "networking cables of different types such as Flat Cables, CAT 3 cables, CAT 5 cables, CAT 6 cables" in Entry 24. What is significant is that the amendment was brought into force the same day of the introduction of State Budget for the year 2013-2014, wherein while introducing the Budget, the Hon'ble Chief Minister specifically acknowledged the difficulties faced by different businesses engaged in the sale of 'computer related items' and resolved to set a clear rate of tax on such items. Subsequently, the amendment, as stated above, was brought in force and the networking items and networking cables were specifically mentioned in Part-A of Schedule IV to the RVAT Act. As rightly submitted by learned counsels for the petitioner-

assessee, it is a settled position of law that subsequent legislation can be looked at in order to see what is the proper interpretation to be put upon the earlier legislation when the earlier legislation is found to be obscure or ambiguous. A bare perusal of the subsequent amendment would reveal that the State Government had itself considered networking items and networking cables within the specific entries numbering 3 and 24 of Part-A of Schedule IV to the RVAT Act. A bare perusal of the text of the Hon'ble Chief Minister's speech, as reproduced above, would also reveal that the amendment was brought to remove ambiguity/difficulty in taxation and was thus an amendment in the nature of a clarification and thus having a beneficial purpose and hence would also have retrospective application as well. Reliance in this regard can be placed on Apex Court judgment of **Suchitra Components Ltd. (supra)** and **Kerala State Industrial Development Corporation Ltd. (supra)**, as cited by learned counsels for the petitioner-assessee.

13.4) In the case of petitioner/Rashi Peripheral Pvt. Ltd., the Tax Board has imposed additional differential tax and interest on the entire turnover amount based on the minuscule sale of CAT-5/CAT-6 cable made by the petitioner-assessee, which constituted less than 5% of the total turnover of the petitioner-assessee whereas the other 95% of the turnover was based on sales of other networking items that were undisputedly covered by the judgments of various High Courts cited before the Tax Board. However, with complete disregard to that, the Tax Board had restricted its findings to that of classification of CAT-5 and CAT-6

and on the basis of the same, imposed tax and penalty on entire turnover.

13.5) Lastly, the argument qua HSN adopted by learned counsel for the revenue is also not applicable in the given facts as the same was never raised in the original application or in the show cause notice. The argument qua HSN was never raised before Appellate Authority or the Tax Board, nor was it the foundation of the show cause notice or the original order and therefore the plea qua HSN cannot be raised at this stage. Even otherwise, HSN can only be used for limited purpose of aid and assistance in matters pertaining to RVAT Act as the HSN has not been adopted under RVAT Act and it thus lacks statutory force. In the given case, for the reasons as stated above, it can safely be concluded that the goods in question would fall under Part-A of Schedule IV to the RVAT Act and therefore resort to HSN is not necessary.

14. In view of the foregoing analysis, the question(s) of law framed hereinabove have to be answered in favour of the petitioner-assessee and against the Revenue.

15. Accordingly, all these STRs are allowed. The orders impugned of the learned Tax Board and the authorities below are quashed and set aside.

16. Pending application(s), if any, shall stand disposed of.

17. A copy of this order be placed in each of the file.

(SAMEER JAIN),J