

Rajasthan Tax Board, Ajmer

M/s Rashi Peripherals Pvt. Ltd.,
B-22, Sudarshanpura Indl. Area,
JaipurAppellant

VERSUS

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

1. Appeal No. 1819/2013/Jaipur
2. Appeal No. 1820/2013/Jaipur
3. Appeal No. 1821/2013/Jaipur
4. Appeal No. 1822/2013/Jaipur
5. Appeal No. 1823/2013/Jaipur
6. Appeal No. 1824/2013/Jaipur

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

VERSUS

M/s Rashi Peripherals Pvt. Ltd.,
B-22, Sudarshanpura Indl. Area,
JaipurRespondent

7. Appeal No. 516/2014/Jaipur
8. Appeal No. 517/2014/Jaipur
9. Appeal No. 518/2014/Jaipur
10. Appeal No. 519/2014/Jaipur
11. Appeal No. 520/2014/Jaipur
12. Appeal No. 521/2014/Jaipur

D.B.

SHRI RAJEEV CHOUDHARY, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Alkesh Sharma, Advocate

for Assessee

Shri N.K. Baid,

Dy. Govt. Advocate

for Revenue

Dated : 10/04/2018

JUDGMENT

1. Appeal nos. 1819 to 1824/2013/Jaipur have been filed by the appellant dealer (hereinafter referred as the "assessee") and appeal nos. 516 to 521/2014/Jaipur have been filed by the Revenue against order of the Appellate Authority-I, Commercial Taxes Department, Jaipur (hereinafter called the "appellate authority"), dated 18.09.2012, wherein the levy of tax and interest was upheld but the penalty under section 61 was set aside, as were imposed by the Commercial Taxes Officer, Anti-Evasion, Bhiwadi (hereinafter called the "assessing officer" or

Bl

1

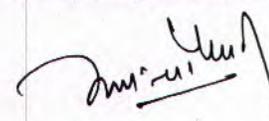
Am: u/ku/10/04/18

the "AO"), vide his order dated 07.09.2012 passed under Section 26, 55 and 61 of the Rajasthan Value Added Tax Act, 2003 (hereinafter called the "Act"). The details of the appellate order as well AO's orders are as under:-

Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Authority's order Details			
		Appeal No.	order dated	order dated	Tax	Interest	Penalty
1819/2013 516/2014	2007-08	258/Appeals-I/ RVAT/JPR/12-13	18.09.2013	07.09.2012	341000 -	201190 -	- 682000
1820/2013 517/2014	2008-09	259/Appeals-I/ RVAT/JPR/12-13	18.09.2013	07.09.2012	458652 -	215566 -	- 917304
1821/2013 518/2014	2009-10	260/Appeals-I/ RVAT/JPR/12-13	18.09.2013	07.09.2012	427302 -	149556 -	- 854604
1822/2013 519/2014	2010-11	261/Appeals-I/ RVAT/JPR/12-13	18.09.2013	07.09.2012	330471 -	115665 -	- 660942
1823/2013 520/2014	2011-12	262/Appeals-I/ RVAT/JPR/12-13	18.09.2013	07.09.2012	278086 -	47274 -	- 556172
1824/2013 521/2014	2012-13	263/Appeals-I/ RVAT/JPR/12-13	18.09.2013	07.09.2012	24572 -	1229 -	- 49144

2. Since all the appeals involve the common issues, therefore, the same are decided by a common order. Copy of the order be placed on each relevant appeal file.
3. Brief facts leading to the present appeals are that the assessee is dealing in the various items required in computer networking and connectivity, particularly the cables called 'CAT 5' and 'CAT 6'. The Anti-evasion authorities surveyed the business place of the appellant and found that though the items sold by it, specifically the CAT 5 and CAT 6 cables, were taxable at the residuary rate as notified under Schedule-IV of the Act, but the appellant collected and deposited the tax @ 4% or 5% as applicable during the relevant period by treating the goods as 'IT Products'. The AO after his detailed findings held these products as not covered under the Schedule-IV (Part-A) instead held it to be taxable at residuary tax rate of 12.5% or 14% as applicable during the relevant period for Schedule-V goods, and





peripherals and emphasized that CAT 5 and CAT 6 cables cannot be placed under the category of peripherals. He, therefore, requests to reject the appeals filed by the appellant. He further submits as the assessee has deliberately tried to avoid or evade the tax by charging tax at the lower rate, therefore, the penalty as levied under section 61 of the Act, was just and proper and requests that the same may be restored.

7. We have gone through the submission of both the parties, perused the relevant record and explored the literature of the products in question.
8. Before going into the main issue i.e. what constitutes or comprises of the 'computer peripherals', it would be appropriate to have a look at the relevant entry in Schedule IV Part-A, which has undergone several changes/amendments/substitution during the relevant period, is mentioned as under:-

S.No.	Description of Goods	Rate of Tax	Remarks
1.	Computer systems and peripherals, electronic diaries	4%	w.e.f. 01.06.2006
2.	Computer systems and peripherals, computer printers excluding multifunctional devices & electronic diaries	4% upto 8.3.2010; 5% w.e.f. 9.3.2010	w.e.f. 06.03.2013
3.	Computer systems and peripherals excluding tablet computers known by whatever name like i-pad, e-book reader, phablet, state 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% upto 1.2.2016; 5.5% w.e.f. 2.2.2016	

9. To understand the term 'computer peripherals' and the products under question and its usages, we have extensively surfed into the literature as available on the internet (particularly the Wikipedia and other reference material as available on other sites), about these items namely CAT 5 and CAT 6 cables, and try to elaborate the things to a reasonable precision in the following paragraphs :-

The term 'Computer Peripherals' and what are the peripheral devices of computer:

B

[Handwritten Signature]

10. A computer peripheral is a device that is connected to a computer but is not part of the core computer architecture. The core elements of a computer are the central processing unit, power supply, motherboard and the computer case that contains those three components. A peripheral device connects to a computer system to add functionality. Examples are a mouse, keyboard, monitor, printer and scanner. There are three types of Computer Peripherals and they are;
- (i) **Input device:** used to interact with, or send data to the computer (mouse, keyboards, etc.)
 - (ii) **Output device:** which provides output to the user from the computer (monitors, printers, etc.)
 - (iii) **Storage device:** which stores data processed by the computer (hard drives, flash drives, etc.) Peripheral devices can be external or internal. For example, a printer is an external device that is connected using a cable, while an optical disc drive is typically located inside the computer.

Networking Cables: Types and Specifications

11. **Category 5 cable** or popularly known as **CAT 5** in trade parlance, is used in structured cabling for computer networks such as Ethernet over twisted pair. The cable standard provides performance of up to 100 MHz and is suitable for 10BASE-T, 100BASE-TX (Fast Ethernet), and 1000BASE-T (Gigabit Ethernet). The 10BASE-T and 100BASE-TX Ethernet connections require two wire pairs but the 1000BASE-T Ethernet connections require four wire pairs. Through the use of power over Ethernet (PoE), the power can be carried over these cables in addition to Ethernet data.
12. Category 5 cable is a twisted pair cable and it is often used in structured cabling for computer networks such as fast Ethernet, although they are also used to carry many other signals such as basic voice services, token ring, and ATMs. The cable standard provides performance of up to 100 MHz and is suitable for most varieties of **Ethernet** over twisted pair. **Ethernet** is a family of computer networking technologies commonly used in local area networks (LAN), metropolitan area networks (MAN) and wide area networks (WAN). It was commercially introduced in 1980 and first standardized in 1983 and has since been refined to support higher bit rates and longer link distances. Over time,

B

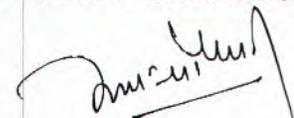
Amirul

Ethernet has largely replaced competing wired LAN technologies such as Token Ring, FDDI and ARCNET.

13. CAT 5 is also used to carry other signals such as telephony and video. In some cases, multiple signals can be carried on a single cable; Cat 5 can carry two conventional telephone lines as well as 100BASE-TX in a single cable. The USOC/RJ-61 wiring standard may be used in multi-line telephone connections. There exist various schemes for transporting both analog and digital video over these types of cables. Category 5e cable is an enhanced version of Cat 5 for use with 1000BASE-T (gigabit) networks, or for long-distance 100 Base-T links (350 m, compared with 100 m for Cat 5). It must meet the EIA / TIA 568A-5 specification. Virtually all cables sold as Cat 5 are actually Cat 5e.
14. **Category 6 cable**, commonly referred to as **CAT 6**, is a standardized twisted pair cable for Ethernet and other network physical layers that is backward compatible with the Category 5/5e and Category 3 cable standards. Compared with CAT 5 and CAT 5e, CAT 6 features more stringent specifications for crosstalk and system noise. The cable standard also specifies performance of up to 250 MHz compared to 100 MHz for Cat 5 and Cat 5e.
15. The cable contains four twisted copper wire pairs, just like earlier copper cable standards, although each twisted pair is made up of slightly larger 23 gauge copper wire as opposed to Cat 5's 24 gauge wire. When used as a patch cable, Cat-6 is normally terminated in RJ-45 electrical connectors. If components of the various cable standards are intermixed, the performance of the signal path will be limited to that of the lowest category. The distance without losing data is 220 m.
16. Although these cables are used for a variety of purposes, they are most commonly known to be used as network cables, i.e. they connect computers and servers to modems and (ultimately) ISPs. Like virtually everything else in the technology sector, these cables have undergone significant development over the years, and the newest cables are capable of significantly greater performance than previous cables. The difference between a Cat5 vs Cat6 cable is not only higher speeds but reduced 'crosstalk'. The 'crosstalk' is the term used in networking terminology in a situation where Electronic

3

6

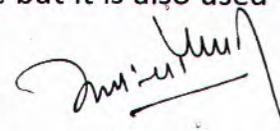


equipments (including cat cables) emit electromagnetic signals and when lots of cables are near one another, these cables can interfere with one another. This interference is referred to as "crosstalk". Crosstalk increases errors and lost packets (among other issues). Newer versions of cat cables (i.e. Cat6 and Cat6A cables) reduce the impact of crosstalk through a variety of methods, including improved shielding and twisted cable design.

17. After studying the peripheral, networking cables and various usages of the CAT 5 and CAT 6 cables, now we go through the various judgments as cited by the appellants, wherein the various computer related devices have been held to be the 'computer peripherals'. In '**State of Tamilnadu V/s CMC Ltd**' case (2014)75 VST 413 (Mad), the 'Router' was held to be a Computer Peripheral by the Hon'ble Madras High Court. In '**Canon India Ltd. V/s State of Tamilnadu**' case (2015) 80 VST 483 (Mad), the Image Runners (Multifunction Network Printers) were held to be Computer Peripherals. In '**M/s Kores (India) Ltd. & Ors. V/s Assistant Commissioner & Anr.**' case (2011) 44 Tax Update 145 (Raj.), the Hon'ble Rajasthan High Court held that Multifunctional Devices were Computer Peripherals. In '**Assistant Commissioner Vs. BITS & BITES**' case (2011) 44 VST 416 (Raj), the Constant Voltage Transformers (CVTs) and UPS were held to be accessories of computers.
18. In all the four judgments as referred above, the articles under question were some sort of equipments or apparatuses like routers, multifunction network printers, multifunctional devices which were held to be computer peripherals, and CVTs & UPS were held to be computer accessories. Since in the instant matter, the items under determination is CAT 5 and CAT 6 cables which do not fall in category of the items as discussed in all the four judgments, therefore, these judgments do not apply in the instant case.
19. It is evident from the literature available on the internet that the items in question i.e. CAT 5 and CAT 6 cables, apart from being used in computer networking, are also used in voice telephony i.e. telecommunication, for transporting both analog and digital video over the cable and power can also be carried over the cable in addition to the Ethernet data. So, we are of the considered view that the use of the cables CAT 5 and CAT 6 is not restricted to computer networking alone but it is also used

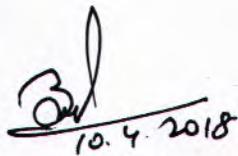
3

7

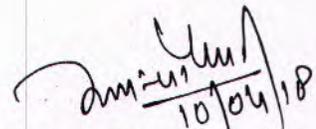


in telecommunication, cable networks and CCTV cameras etc. Moreover, the computer peripherals *per se* include various types of hardware apparatuses and the CAT 5 and CAT 6 cables are not hardware apparatus as such and its usage is not confined to computer network only, therefore, these items cannot be held to be the 'computer peripherals', resultantly these items would be exigible to tax at the residual rate. Accordingly, the differential tax and interest thereupon as levied by the AO is justified. Hence, the levy is confirmed and appellate order on this issue is also confirmed.

20. So far as the issue of imposition of penalty under section 61 of the Act is concerned, it has been held by the Hon'ble Supreme Court as well as the Hon'ble Rajasthan High Court that where the transactions are entered in the books of accounts of the assessee and there is a dispute regarding the rate of tax, in such cases penalty provisions should not be invoked. The judgments worth mentioning in this regard are:-
- (i) Shree Krishna Electricals Vs. State of Tamil Nadu & Another (2009) 11 SCC 687
 - (ii) Reckitt Benckiser India Ltd Vs. ACTO, SB STR No. 7/2012 order dated 07.04.2017 (RHC)
21. Since the present matter also relates to a dispute about rate of tax only and this fact is not disputed that the transactions were well recorded in the books of accounts of the assessee, therefore, the penalty as levied under section 61 of the Act by the AO does not stand justified in light of the above mentioned judicial pronouncements, and the same has rightly been set aside by the appellate authority.
22. As discussed above, the appellate orders are confirmed and appeals of the assessee as well as the Revenue are rejected.
23. Order pronounced.


10.4.2018

(Omkar Singh Ashiya)
Member


10/04/18

(Rajeev Choudhary)
Member