राजस्थान कर बोर्ड, अजमेर

1. अपील संख्या – 1835/2014/जयपुर.

मैसर्स एल्कोटेक इलेक्ट्रोनिक्स (इण्डिया) प्रा. लिमिटेड,
(नया नाम इओलेन इलेक्ट्रोनिक्स बेंगलौर प्रा. लि.).
इलेक्ट्रोनिक सिटी, फेज–।।, बैंगलोर, कर्नाटक–560100 .....अपीलार्थी.

बनाम

1. अपीलीय प्राधिकारी–II, वाणिज्यिक कर जयपुर.
2. वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, राज.–I, जयपुर. .....प्रत्यर्थी.

2. अपील संख्या – 314/2015/जयपुर.

सहायक आयुक्त, प्रतिकरापवंचन, राजस्थान–प्रथम, जयपुर. .....अपीलार्थी.

बनाम

मैसर्स एल्कोटेक इलेक्ट्रोनिक्स (इण्डिया) प्रा. लिमिटेड,
(नया नाम इओलेन इलेक्ट्रोनिक्स बेंगलौर प्रा. लि.).
इलेक्ट्रोनिक सिटी, फेज–।।, बैंगलोर, कर्नाटक. .....प्रत्यर्थी.

खण्डपीठ
श्री खेमराज, अध्यक्ष
श्री मनोहर पुरी, सदस्य

उपस्थित : :

श्री अलकेश शर्मा, अभिभाषक .....व्यवहारी की ओर से.
श्री एन. के. बैद,
उप–राजकीय अभिभाषक .....विभाग की ओर से.

निर्णय दिनांक : 11/08/2016

निर्णय

1. ये दोनों अपीलें उपायुक्त (अपील्स), प्रथम, वाणिज्यिक कर, जयपुर (जिसे आगे **'अपीलीय अधिकारी'** कहा जायेगा) के अपील संख्या 94/अप्रा–I/एनआरडी/2014–15 में पारित किये गये आदेश दिनांक 17.09.2014 के विरूद्ध राजस्थान मूल्य परिवर्धित कर अधिनियम, 2003 (जिसे आगे **'वेट अधिनियम'** कहा जायेगा) की धारा 83 के प्रस्तुत की गयी हैं। अपीलीय अधिकारी ने उक्त आदेश से वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, राजस्थान, वृत–प्रथम, जयपुर (जिसे आगे **'कर निर्धारण अधिकारी'** कहा जायेगा) के वेट अधिनियम की धारा 24(6) सपठित 25, 55 व 61 के तहत पारित किये गये आदेश दिनांक 11.04.2014 के विरूद्ध प्रस्तुत अपील को आंशिक रूप से स्वीकार करते हुए कर निर्धारण अधिकारी द्वारा आरोपित कर रूपये 12,04,85,412/– व ब्याज रूपये 6,39,27,426/– की पुष्टि करते हुए वेट अधिनियम की धारा 61 के तहत आरोपित शास्ति रूपये 24,09,70,824/– को अपास्त किया है। अतः कर व ब्याज के बिन्दु पर अपीलार्थी व्यवहारी द्वारा अपील संख्या 1835/2014 एवं शास्ति के बिन्दु पर अपीलार्थी राजस्व द्वारा अपील संख्या 314/2015 प्रस्तुत की गयी है।

लगातार.....2

2. ये दोनों अपीलें एक ही पक्षकार से सम्बन्धित होने तथा अपीलीय अधिकारी के एक ही आदेश के विरूद्ध प्रस्तुत किये जाने से दोनों अपीलों का निस्तारण एक ही निर्णय से किया जाकर निर्णय की प्रति प्रत्येक पत्रावली पर पृथक—पृथक रखी जा रही है।

3. प्रकरण के तथ्य संक्षिप्त में इस प्रकार हैं कि अपीलार्थी व्यवहारी के व्यवसाय स्थल का सर्वेक्षण दिनांक 13.05.2010 को किया गया था। सर्वेक्षण में अपीलार्थी फर्म द्वारा वित्तीय वर्ष 2008—09 में (दिनांक 01.09.2008 से 31.03.2009) में डबल रेडियो यूनिट की बिक्री 4 प्रतिशत की दर से किया जाना पाया गया। कर निर्धारण अधिकारी द्वारा अपने आदेश दिनांक 24.09.2010 द्वारा अपीलार्थी फर्म पर अन्तर कर रूपये 12,04,85,412/— ब्याज रूपये 2,77,11,645/— धारा 61 तहत शास्ति रूपये 35,43,68,859/— कुल रूपये 50,25,65,916/— कायम किये गये थे। उपरोक्त मांग को पुनः आदेश दिनांक 01.11.2010 को संशोधित किया जाकर रूपये 38,91,67,881/— आरोपित किये गये। अपीलार्थी द्वारा कर निर्धारण आदेश दिनांक 24.09.2010 के विरूद्ध अपील किये जाने पर उपायुक्त (अपील्स) प्रथम, वाणिज्यिक कर, जयपुर द्वारा अपने आदेश दिनांक 02.05.2011 के द्वारा निम्नानुसार मामले का निस्तारण किया गया :—

> ".....यदि कर निर्धारण अधिकारी उक्त विश्लेषण व अभिमत से भिन्न विचार रखते है तो उन्हें इसे वैज्ञानिक आधार पर प्रमाणित करना चाहिए था। किन्तु इस प्रकरण में ऐसा नहीं किया गया व बिना विश्लेषण किये हुए बिना प्रमाण के निष्कर्ष निकाला गया है। अतः कर निर्धारिण्ण अधिकारी द्वारा आरोपित कर, ब्याज व शास्ति को अपास्त करते हुए प्रकरण कर निर्धारण अधिकारी को प्रतिप्रेषित करते हुए निम्न निर्देशों की पालना पुनः आदेश पारित करने हेतु निर्देर्शित किया जाता है कि DRU पर कर देयता सामान्य दर (12.5 प्रतिशत) निर्धारित करने से पहले अपीलार्थी द्वारा पेश विकीपिडिया के साक्ष्य, संयुक्त राष्ट्र अमेरिका के पेटेन्ट, विशेषज्ञों की राय (opinion) को वैज्ञानिक प्रमाण सहित गलत साबित करे।
>
> BTS किस प्रकार से ट्रांसमिशन एपरेट्स नहीं है इसे प्रमाणित करे व यह भी प्रमाणित करें कि DRU, BTS का अभिन्न अंग नहीं है। यदि इस संबंध में कर निर्धारण अधिकारी इसके अतिरिक्त भी विशेषज्ञों की राय (opinion) लेना चाहे व जांच द्वारा अन्य साक्ष्य जुटना चाहें तो वे इसके लिए स्वतंत्र है।....."

लगातार.....3

4. अपील आदेश दिनांक 02.05.2011 की अनुपालना में कर निर्धारण अधिकारी द्वारा दिनांक 10.10.2011 को नियम 35 आरवैट नियम सपठित धारा 26, 55 व 61 रा.मू.प.क.अ., 2003 के तहत् आदेश पारित किया गया। कर निर्धारण अधिकारी द्वारा अपने आदेश में यह अंकित करते हुये कि —

> ".....आलोच्य प्रकरण में विवादित वस्तु डीआरयू, ट्रांसमिशन एपरेटस का सब पार्ट है, ना कि पार्ट, जबकि रा.मू.प.क.अ., 2003 के शिड्यूल—चतुर्थ की प्रतिष्टि क्रमांक 65 की उप प्रविष्टि क्रमांक 28 (part of 1-27 Above) में केवल ट्रांसमिशन एपरेटस के पार्ट को ही 4 प्रतिशत की दर कर दर में होना अधिसूचित है। आलोच्य प्रकरण में बीटीएस, ट्रांसमिशन एपरेटस का पार्ट है और डीआरयू ट्रांसमिशन एपरेटस के पार्ट का सब—पार्ट है। किसी भी राज्य में बिक्री कर का निर्धारण माननीय विधायिका द्वारा पारित कानून, अध्यादेश, अधिनियम एवं अधिसूचनाओं से निर्विष्टि होता है जिसमें कतिपय वस्तु के संबंध में प्रभावी कर दर का वर्गीकरण माननीय विधायिका की स्पष्ट मंशा का घोतक है। जैसा कि पूर्व मे उल्लेख किया जा चुका है कि रा.मू.प.क.अ., 2003 में वस्तु विशेष के parts components, Assessories के संबंध में अधिसूचित वस्तुओं को नोटिफाईड किया हुआ है।....."

5. कर निर्धारण अधिकारी द्वारा अपने आदेश दिनांक 10.10.2011 में अभिनिर्धारित किया है —

> ".....निष्कर्षतः आलोच्य प्रतिप्रेषित प्रकरण में उक्तानुसार माननीय उपायुक्त (अपील्स) द्वारा निर्दिष्ट वस्तुओं की जांच कार्य सम्पादित किया जा चुका है। प्रकरण को प्रतिप्रेषित होने का जो ठोस आधार चिन्हित किया था उसमें, डीआरयू के संबंध में विषय विशेषज्ञों की एवं विकिपीडिया एनसाइक्लोपीडिया की वेबसाईट पर उपलब्ध व्याख्या का व्यवहारी द्वारा प्रस्तुत निर्वचन की विवादित वस्तु के संबंध में सम्पूर्ण विश्लेषण किया जा चुका है। फलस्वरूप डीआरयू न तो ट्रांसमिशन एपरेटस है और न ही ट्रांसमिशन एपरेटस का पार्ट है। वस्तुतः डीआरयू **as per opinion given by the MNIT subject specialists is as under..... "It is clarified that" DRU is integral part of BTS" should be interpreted as DRU is sub-part of transmission apparatus as DRU is part of BTS which is part of transmission apparatus."** इस प्रकार आलोच्य प्रकरण में विवादित कमोडिटी सामान्य कर दर की श्रेणी से आच्छादित है।...."

लगातार.....4

6. उपरोक्त आदेश दिनांक 10.10.2011 द्वारा भी कर निर्धारण अधिकारी द्वारा यह मानते हुये कि डीआरयू किसी भी शिड्यूल में अंकित नहीं है और न ही यह वेट अधिनियम के शिड्यूल–IV की प्रविष्टि क्रमांक 65 की उप प्रविष्टि क्रमांक 28 में आच्छादित होती है। अतः कर निर्धारण अधिकारी द्वारा यह माना गया कि डीआरयू न तो ट्रांसमिशन एपरेटस है और न ही ट्रांसमिशन एपरेटस का पार्ट है। उनके द्वारा यह माना गया कि डीआरयू सामान्य कर श्रेणी की दर से आच्छादित होती है।

7. कर निर्धारण अधिकारी के आदेश दिनांक 10.10.2011 की अपील उपायुक्त (अपील्स) प्रथम, जयपुर द्वारा दिनांक 20.04.2012 को अपील का निर्णय किया गया। अपील आदेश में मुख्यतः निम्न प्रकार से अपील का निस्तारण किया गया :–

> ".....MNIT के विशेषज्ञों द्वारा दुबारा जो राय दिनांक 26.08.2011 को दी गई उसे प्रमुख आधार मानकर कर निर्धारण अधिकारी द्वारा आदेश इस तथ्य को मानकर पारित किया गया कि BTS एक ट्रांसमिशन एपरेट्स ना होकर ट्रांसमिशन एपरेट्स का एक पार्ट मात्र है। इस प्रकार ट्रांसमिशन एपरेट्स का BTS एक पार्ट है एवं DRU उसका सब–पार्ट है तथा सब–पार्ट को कर निर्धारण अधिकारी द्वारा पार्ट की श्रेणी में नहीं मानकर इसे एक भिन्न वस्तु मानकर शिड्यूल–IV Part-A की प्रविष्टि संख्या 28 से कवर्ड नहीं मानकर अपना निर्णय दिया है।
>
> कर निर्धारण अधिकारी द्वारा पार्ट व सब–पार्ट का कोई समुचित लीगल आधार बताये बिना उक्त कर निर्धारण आदेश पारित किया गया। विद्वान अभिभाषक द्वारा बहस के दौरान कथन किया कि पार्ट का पार्ट भी मुख्य वस्तु का पार्ट होता है।
>
> इसके अतिरिक्त विद्वान अभिभाषक ने आगे कथन किया कि कर निर्धारण अधिकारी द्वारा नैसर्गिक न्याय के सिद्धान्त का उल्लंघन करते हुये यह आदेश पारित किया गया है एवं अपीलार्थी द्वारा MNIT के तीनों विशेषज्ञों का कटु परीक्षण (क्रॉस–एग्जामिनेशन) का अवसर चाहा था, उसे भी स्वीकार नहीं किया गया। कटु परीक्षण (क्रॉस–एग्जामिनेशन) का अवसर दिये बिना ही एवं तथ्यों की निष्पक्ष जांच किये बिना ही उक्त निर्णय पारित किया गया।
>
> कर निर्धारण अधिकारी ने अपने कर निर्धारण का मुख्य आधार MNIT द्वारा दी गयी राय दिनांक 26.08.2011 को बनाया है जिसमें DRU को BTS का पार्ट बताया गया है।

लगातार.....5

कर निर्धारण अधिकारी ने अपने आदेश में यह भी माना है कि ट्रांसमिशन एपरेट्स संयुक्त रूप से BTS, Antenna, Power System आदि के समायोजन से बनी एक मिश्रित इकाई है जिसमें DRU इसका पार्ट नहीं है एवं BTS स्वंय भी अपने आप में ट्रांसमिशन एपनरेट्स नहीं है।

उपरोक्त आधार पर कर निर्धारण अधिकारी द्वारा DRU को ट्रांसमिशन एपरेट्स का सब—पार्ट मानते हुये अनुसूची—IV Part-A की प्रविष्टि संख्या 28 सपठित प्रविष्टि संख्या 12 से आच्छादित नहीं मानकर 12.5 प्रतिशत की दर से कर योग्य माना है।

विकीपीडिया के साक्ष्य, संयुक्त राष्ट्र अमेरिका के पेटेन्ट, प्रोफेसर के.एस. गुरूमूर्ति की राय एवं MNIT के विशेषज्ञों की राय दिनांक 11.11.2010 के अनुसार BTS एक ट्रांसमिशन एपरेट्स है एवं DRU इसका पार्ट है। यह तथ्य उपायुक्त (अपील्स) द्वारा अपने आदेश दिनांक 02.05.2011 में भी उल्लेखित किया है।

MNIT के विशेषज्ञों द्वारा दिनांक 26.08.2011 को दी गयी संशोधित राय में BTS को ट्रांसमिशन एपरेट्स का पार्ट एवं DRU को ट्रांसमिशन एपरेट्स का सब—पार्ट होना बताया है।

इस पर MNIT के विशेषज्ञों के अनुसार DRU ट्रांसमिशन एपरेट्स का सब—पार्ट है और सब—पार्ट को पार्ट माना जावे या नहीं, इसके संदर्भ में लीगल पक्ष देखते हुये कर निर्धारण अधिकारी पर ही दायित्व डाला गया है।

कर निर्धारण अधिकारी द्वारा इस संबंध में जो न्यायिक निर्णय उद्धरित किये है उनमें भी पार्ट व सब—पार्ट के अन्तर का प्रकट/अप्रकट रूप से उल्लेख नहीं है। अपीलार्थी के अधिकृत प्रतिनिधि ने बहस के दौरान कथन किया कि पार्ट का पार्ट भी मुख्य वस्तु का पार्ट होता है।

अतः पार्ट व सब—पार्ट का जो अन्तर कर निर्धारण अधिकारी द्वारा किया गया है उसका समुचित लीगल आधार बताये बिना ही कर निर्धारण आदेश पारित किया गया है।

कर निर्धारण अधिकारी द्वारा MNIT के विशेषज्ञों के द्वारा दी गयी राय दिनांक 26.08.2011 को आधार मानकर आदेश पारित किया गया है। इस संबंध में अपीलार्थी द्वारा MNIT के विशेषज्ञों से कटु परीक्षण (क्रॉस—एग्जामिनेशन) चाहा था उसका अवसर दिया जाना चाहिए था जो कर निर्धारण अधिकारी द्वारा नहीं दिया गया।

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अपीलार्थी द्वारा प्रस्तुत साक्ष्य जैसे विकीपिडिया, Malviya National Institute of Technology (MNIT), जयपुर, बैंगलौर विश्वविद्यालय के विशेषज्ञों प्रोफेसर के.एस. गुरूमूर्ति की राय (opinion) व संयुक्त राष्ट्र अमेरिका के पेटेन्ट संख्या यू.एस.6577878 बी—1 दिनांक 10.06.2003 के संदर्भ में कर निर्धारण अधिकारी द्वारा कोई सारगर्भित निर्णय नहीं किया गया है कि उक्त राय/साक्ष्य इस प्रकरण में किस प्रकार लागू नहीं होती है।

उपरोक्त संदर्भित प्रकथन किस प्रकार एक दूसरे के पूरक अथवा विरोधाभासी है इस संबंध में कोई तार्किक विवेचना व कारण सहित संदर्भाधीन निर्णय के आधार का अपीलाधीन कर निर्धारण आदेश में अभाव है। अतः यह साबित करना कि तथ्यों के प्रकाश में, निर्णयों के परिप्रेक्ष्य में तथा क्षेत्र के विशेषज्ञों की अभ्युक्तियों को दृष्टिगत रखते हुये करारोपण का निश्चयात्मक आधार स्पष्ट करना कर निर्धारण अधिकारी द्वारा अपेक्षित द्वारा अपेक्षित है।

अतः उक्त आधार पर पारित कर निर्धारण आदेश का समर्थन नहीं किया जा सकता। अतः आरोपित अन्तर कर, ब्याज, शास्ति अपास्त करते हुये प्रकरण कर निर्धारण अधिकारी को प्रतिप्रेषित करते हुये निर्देश दिये जाते है कि MNIT के विशेषज्ञों की जिस राय को आधार बनाकर अपीलार्थी के विरूद्ध अतिरिक्त करारोपण की कार्यवाही की गई है, की प्रतिलिपि अपीलार्थी को भी दी जावे तथा अपीलार्थी को MNIT के विशेषज्ञों का कटु परीक्षण (क्रॉस—एग्जामिनेशन) करावें। कर निर्धारण अधिकारी पुनः सम्पूर्ण तथ्यों की जांच करते हुये अपीलार्थी को सुनवाई का पूर्ण अवसर देते हुए विधि सम्मत आदेश पारित करे।

फलतः अपीलार्थी की अपील प्रतिप्रेषित की जाती है।....."

8. उपायुक्त (अपील्स) प्रथम, जयपुर के आदेश दिनांक 20.04.2012 के द्वारा रिमाण्ड प्रकरण का निस्तारण कर निर्धारण अधिकारी के आदेश दिनांक 11.04.2014 के द्वारा किया गया है, जिसके तहत अतिरिक्त कर रूपये 12,04,85,412/—, ब्याज रूपये 6,39,27,426/—, व धारा 61 के तहत् शास्ति रूपये 24,09,70,824/— कुल रूपये 42,53,83,662/— का आरोपण किया गया।

9. कर निर्धारण आदेश दिनांक 11.04.2014 के अनुसार उपायुक्त (अपील्स) के रिमाण्ड आदेश दिनांक 20.04.2012 द्वारा इन बिन्दुओं पर वाद को प्रतिप्रेषित किया गया था :—

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"1. कि एमएनआईटी के विशेषज्ञो की जिस राय को आधार बनाकर अपीलार्थी के विरूद्ध अतिरिक्त करारोपण की कार्यवाही की गई है, की प्रतिलिपि अपीलार्थी को भी दी जावे।

2. कि अपीलार्थी को एमएनआईटी के विशेषज्ञों का कटुपरीक्षण (क्रास–एक्जामिशन) करावे।

3. कि कर निर्धारण अधिकारी पुनः सम्पूर्ण तथ्यों की जांच करते हुये अपीलार्थी को सुनवाई का पूर्ण अवसर देते हुये विधिसम्मत् आदेश पारित करें।...."

10. अपीलार्थी की ओर से विद्वान अभिभाषक ने बहस में कथन किया कि वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन, राजस्थान–प्रथम, जयपुर द्वारा आदेश दिनांक 11.04.2014 के द्वारा अविधिक रूप से मांग सृजित की है जिसमें कर राशि रूपये 12,04,85,412/– ब्याज राशि रूपये 6,39,27,426/– व शास्ति राशि रूपये 24,09,70,824/– सम्मिलित है। शास्ति के संबध में मांग राशि अपीलीय अधिकारी के द्वारा अपास्त की जा चुकी है। उक्त विवादित आदेश के द्वारा कर निर्धारण अधिकारी ने यह निर्धारित किया है की अपीलार्थी द्वारा विनिर्मित एवं बिक्रीत माल "डबल रेडियो युनिट" (डीआरयू) वैट अधिनियम की अनुसूची-V में रेजीड्यूल प्रविष्टि में वर्गीकृत होने योग्य है तथा तद्नुसार उस पर 12.5 प्रतिशत की दर से कर देय है।

11. दोनों निम्नतर अधिकारियों द्वारा नैसर्गिक न्याय के सिद्धान्तों की पालना नहीं की गई है। अपीलार्थी द्वारा बेचा गया माल वैट अधिनियम की अनुसूची-IV की प्रविष्टि संख्या–65 व उसके पार्ट 'ए' में प्रविष्टि संख्या–12 से आच्छादित है, तथा 4 प्रतिशत की दर से कर योग्य है।

12. प्रथम बार वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन राजस्थान वृत्त–प्रथम, जयपुर के द्वारा वैट अधिनियम की धारा 25, 55 व 61 में दिनांक 24.09.2010 को आदेश पारित किया गया तथा बैचे गये माल "डबल रेडियो युनिट" (डीआरयू) पर वैट अधिनियम की अनुसूची-V में 12.5 प्रतिशत की दर से कर योग्य होना निर्णित करते हुए कर, ब्याज व शास्ति आरोपित की गई। कर निर्धारण अधिकारी द्वारा उक्त पारित आदेश दिनांक 24.09.2010 के विरूद्ध अपील प्रस्तुत किये जाने पर अपीलीय अधिकारी ने आदेश दिनांक 02.05.2011 के द्वारा फ्रेश कर निर्धारण आदेश पारित करने हेतु प्रतिप्रेषित किया। कर निर्धारण अधिकारी द्वारा अपीलीय अधिकारी के आदेश दिनांक 02.05.2011 की पालना में कर निर्धारण आदेश दिनांक 10.10.2011 को पारित किया गया जिसमें बेचे हुए माल को वैट अधिनियम की अनुसूची-V में विहित कर दर से कर योग्य

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होना माना गया। कर निर्धारण अधिकारी द्वारा दिनांक 10.10.2011 को पारित किये गये आदेश के विरूद्ध पुनः अपील प्रस्तुत किये जाने पर अपीलीय अधिकारी ने अपील आदेश दिनांक 20.04.2012 के द्वारा प्रतिप्रेषित करते हुए पुनः कर निर्धारण आदेश पारित करने के लिये निर्देशित किया। अपीलीय अधिकारी के आदेश दिनांक 20.04.2012 की पालना में कर निर्धारण अधिकारी ने कर निर्धारण आदेश दिनांक 11.04.2014 को पारित किया गया जिसमें अपीलीय अधिकारी ने आदेश दिनांक 17.09.2014 को कर व ब्याज को यथावत रखते हुए अपील अस्वीकार की तथा शास्ति को अपास्त करते हुए अपील स्वीकार की। इसमें कर व ब्याज के बिन्दु पर अपीलार्थी द्वारा अपील की गई है तथा शास्ति के बिन्दु पर विभाग के द्वारा अपील की गई है।

13. अपीलार्थी के विद्वान अभिभाषक ने अग्रिम कथन किया कि BTS (Base Transceiver Station) एक ट्रांसमिशन एप्रेटस है जिस पर कर निर्धारण अधिकारी ने पूर्व निर्णित विचारों के द्वारा कर निर्धारण आदेश पारित किया है तथा निम्नानुसार बहस में कथन किया –

A. It is a settled law that while classifying goods, the foremost consideration is the "statutory definition", if any, provided in the Act. In the absence of any statutory definition, or any guideline provided by the Act or the Rules, the principle of how goods are known in "common trade parlance" is adopted, giving due importance for the common dictionary meaning. The word "Apparatus" is not defined under the RVAT Act or the Rules. Therefore, the meaning of the word has to be understood as per the dictionary meaning.

B. As per the Black's Law Dictionary, the word "apparatus" and "machine" have the same meaning. The Black's Law Dictionary defines the word "machine" as under:

"A device or apparatus consisting of fixed and moving parts that work together to perform some function. Machines are one of the statutory categories of inventions that can be patented".

The Mc-Graw Hills dictionary defines "apparatus" as "acompound instrument designed to carry out a specific function."

The Webster's Dictionary describes the term "apparatus" as an instrument or appliance designeg for a specific operation.

C. The Concise Oxford Dictionary defines "apparatus" as equipment for doing something. The word equipment itself refers to apparatus which is one of the meanings attached to it, as defined in the Concise Oxford Dictionary.

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D. In the case of I.C.B. (P) Ltd. v. Collector of Central Excise, Baroda, 1997 (95) E.L.T. 239, the Tribunal has held that "apparatus" is a compound instrument designed to carry out a specific function or for a particular use. It further held that in order to decide, whether a particular object is an apparatus, an inquiry has to be made as to what operation it performs.

E. In the case of Commissioner of Trade Tax, U.P. v. Varun Beverages Ltd. 2011 (267) E.L.T. 147(S.C.) the appeal was directed against the Judgment and Order dated 19-01-2010 passed by the Allahabad High Court whereby the High Court allowed the revision petition preferred by the Assistant Commissioner holding that values of "bottles" is to be treated as part of "Fixed Capital Investment" as it is an essential apparatus for manufacture of Soft Drinks and therefore could be governed and covered within the meaning of explanation 4(b)(i) to Section 4-A of the U.P. Trade Tax Act. One of the issues before the Apex Court was whether bottles are treatable as essential apparatus or equipments or components for establishment and running of soft drinks factory. The Hon'ble Supreme Court held that bottles are essential apparatus necessary for running factory for manufacture of soft drink and value of investment thereon form part of fixed capital investment and eligible for exemption.

F. It is pertinent to mention that Ericsson which is a world leader in telecom equipment manufacturing had certified through its Senior Specialist (Products and Projects), Mr. Pankaj Pandey that in trade parlance BTS is known & understood as Transmission apparatus. The relevant extracts of the letter is reproduced below:

"the DRU purchased by us are used as part fitted in BTS manufactured by us which is classified as transmission apparatus incorporating reception equipment for Cellular Telephone Net Work System.

In BTS, DRU is the integral part which operates functions of Tranmission and reception of RF Signals through antenna for functioning of Cellular Telephone Net Work. Cost-wise also DRU is substantially valued part of BTS.

In our trade BTS is known & understood as Transmission apparatus incorporating Reception apparatus and DRU is its integral component/part which facilitates functioning of Cellular phone by regulating calls on such phone.

Reliance is also placed on the expert opinion of Mr. K.S. Gurumurthy, who is an expert in the field of Electronics and Communication Engineering.

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It is apparent from the aforesaid definition, case laws and expert opinions that BTS is an "apparatus" as it is designed to carry out a specific function and is meant for a particular use. The nature and function of BTS does not change merely because it is referred as a station.

In light of the above, it is ampy clear that there has been no application of mind by both the lower authorities in deciding the matter, and that there were no basis both in law and fact in confirming the tax and interest on the appellant in the instant case. Both the lower authorities appear to have had a single point mind to levy the tax at the higher rate and in an attempt to do so, they have gone beyond the strict scope of de novo proceedings and have also ignored the evidence and case law submitted before them.

Therefore, it is submitted that the classification under Entry 65 of Schedule IV read with Entry 12 and 28 of Part-A of the RVAT Act may be upheld, and the tax and interest confirmed by the appellate Authority may be set aside in toto. The amount recovered from the Appellant may also be directed to be refunded forthwith.

Both the lower authorities have erred in holding that the DRU is classifiable under the residual entry under Schedule V of the RVAT Act

It is submitted that BTS is a transmission apparatus incorporating reception apparatus, and DRU is a part of BTS. Therefore, DRU clearly falls under Schedule IV A of the RVAT Act, and attracts tax @ 4% accordingly.

It is submitted that BTS is a core part of Cellular Telephone System Network which through its transceiver function (i.e. transmitting signals and receiving signals) establishes the link during mobile call set up.

G. The Wikipedia article on "base Transceiver Station" relied upon by the authorities to hold otherwise in the impugned order, in fact establishes the case of the Appellant. The said article provides as follows:

"A base transceiver station (BTS) or cell site is a piece of equipment that facilitates wireless communication between user equipment (UE) and a network. UEs are devices like mobile phones (handsets), WLL phones, computers with wireless internet connectivity, WiFi and WiMAX gadgets etc. the network can be that of any of the wireless communication technologies like GSM, CDMA, WLL, WAN, WiFi, WiMAX etc. BTS is also referred to as the radio base station (RBS), node B (in 3G Networks) or, simply, the base station (BS)....."

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For the ease of understanding it is pertinent to mention that as quoted in the article above, the communication between user equipment and a network is facilitated by receiving (e.g. from a mobile phone) and transmitting signals (e.g. to a mobile phone), and thus classification under the heading transmission apparatus incorporating reception apparatus is correct in law.

Further, though BTS forms part of the complete cellular network or more specifically the Base Station Subsystem ('BSS') which includes several BTSs spread over a wide geographical location and a Base Station Controller ('BSC'), the actual task of transmission and reception of signals, as covered under entry 12 above is carried out by the BTS alone and all other devices perform supporting functions like supply of power (by Power Supply Unit), distributing signals to various other units (by Distributing Switching Units) or sending out or receiving signals in the air (by Antenna) etc.

Since, BTS has the capability of both transmitting and receiving signals it is more specifically classified as "Transmission apparatus incorporating reception apparatus" under entry 12 of Schedule IV-A to RVAT Act.

In support, the Appellant has relied upon the United States Patent No. US 6,577,878 B1 dated 10 june 2003 which relates to "Base Transceiver Station of Digital Mobile Telecommunication System". Patents are allowed only after strict scientific and technical scrutiny of the application of patent and thus the description provided in a granted patent can be safely relied upon as highly trusted source. The said patent on Page 8, Colum 1 Paragraph 2 states as follows:

"In a digital mobile telecommunication system such as a personal communication system (PCS) or digital cellular system (DCS), generally, a base transceiver station functions to transmit and receive data and voice over radio channel, control a terminal (e.g. a PCS or a DCS terminal), monitor the quality of speech of the terminal and interconnect the terminal and a base station controller (referred to hereinafter as BCS). Namely the base transceiver station is located between a mobile station and a BCS to interface between wired and wireless channels and perform main functions associated with a radio link…..

The base transceiver station is further adapted to perform a function of transmitting and receiving radio signals over a pilot channel, synchronization channel, assess channel, paging channel and traffic channel, a function of routing traffic and control information to the BCS and effort detection/ statistical information collection/report function.

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H. It is pertinent to note that Radio Base Station 2106 ('RBS 2106') is a BTS manufactured by Ericsson worldwide and in the 'RBS 2106 installation and integration Manual' prepared by Ericsson BTS has been explained at page 13 as follows:

"The Base Transceiver Station (BTS) handles the radio interface to the mobile station. The BTS is the radio equipment (transceivers and antennas) required to serve each cell in the network. A group of BTSs are controlled by a BSC.

The Radio Base Station (RBS) includes all the radio and transmission interface equipment required on one site".

I. Further, heading 8517 of the First Schedule to the Central Excise Tariff Act, 1985 contains as under:

8517 "TELEPHONE SETS, INCLUDING TELEPHONES FOR CELLULAR NETWORKS OR FOR OTHER WIRELESS NETWORKS; OTHER APPARATUS FOR THE TRANSMISSION OR RECEPTION OF VOICE, IMAGES OR OTHER DATA, INCLUDING APPARATUS FOR COMMUNICATION IN A WIRED OR WIRELESS NETWORK (SUCH AS A LOCAL OR WIDE AREA NETWORK), OTHER THAN TRANSMISSION OR RECEPTION APPARATUS OF HEADING 8443, 8525, 8527, OR 8528".

Other apparatus for transmission or reception of voice, images or other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network):

85176100—Base Station

J. As per Rule 6 of the General rules for the interpretation of first Schedule of the Central Excise Tariff Act, 1985, for legal purposes, the classification of goods in the sub-headings of a heading shall be tetermined according to the terms of those sub-headings and any related sub-heading Notes and, mutatis mutandis, to the above rules, on the understanding that only sub-headings at the same level are comparable. For the purposes of the rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.

K. The first Schedule to the Central Excise Tariff Act is based on the Harmonized Commodity Description and Coding System (HSN), also known as the Harmonized System of Tariff Nomenclature, which is standardized international system of classification of products developed by the World Custom, Organization. The WCO has also published Explanatory Notes to the HSN, to clarify the scope of the entries of the HSN. The General Explanatory Notes to the General Rules for the

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interpretation of first Schedule of the Central Excise Tariff Act, 1985 states that "Where the description of an article or group of articles under a heading is preceded by "-", the said article or group of articles shall be taken to be a sub-classification of the article or group of articles covered by the said heading. Where, however, the description of an article or group of articles is preceded by "—", the said article or group of articles shall be taken to be a sub-classification of the immediately preceding description of the article or group of articles which has "-".

L. From the above, it is evident that under the Heading 8517, "base station" has been specifically mentioned under tariff item 8517 61 00. Further, the tariff item 8517 61 00 is sub-classification of "other apparatus for transmission or reception of voice, images and other data, including apparatus for communication in a wired or wireless network (such as a local or wide area network)", which in turn is a sub-classification of Heading 8517. Therefore, it is obvious that "base station" is an apparatus for transmission or reception. Also, as per the Explanatory Note on Rule 6 of the "General Rules for the Interpretation of the Harmonized System", "base station" must be considered as an apparatus for transmission and reception of voice, image or other data.

Further, since, sub-heading 8517 70 contains parts of all the goods under heading 8517, which per the submissions made above also includes BTS, DRU can be called as part of BTS. For Central Excise purposes, the Appellant has therefore been classifying the DRU under tariff item 8517 70 90 (i.e. "other"), which is a sub-classification of sub-heading 8517 70 (i.e. "parts") of heading 8517.

It is submitted that the Appellant's classification of DRU under the above tariff heading i.e. 8517 70 90 as parts of BTS has not till date been questioned or disputed by the Central Excise department. This is ample evidence of the correctness of classification of DRU as a part of transmission apparatus (viz. BTS) by the Appellant.

M. At this juncture it would be relevant to mention the case of Televista Electronics (P) Limited v. Commissioner of Sales Tax, [Supra] wherein the Hon'ble Delhi High Court observed that:

"There can be no better criteria for determining the trade understanding than taking note of the entries in the Central Excise and Customs Tariff Act because the manufacturers, as well as the importers of goods, who are representatives of trade, industry and business, directly deal with them."

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N. Accordingly, it is clear from the above submissions that BTS is a transmission apparatus incorporating reception apparatus which performs the function of receiving and sending signals in variety of networks as contemplated under entry 12 of Schedule IV, Part-A. the fact that BTS is a standalone unit and does not form part of any other apparatus has also been recognized and observed by the Hon'ble Supreme Court of India and High Courts in the following cases:

(i) Commissioner of Customs, Bangalore vs. Spice Telecom, Bangalore, (2006)10 SCC_704: The following extract from the decision is relevant:

"13. In order to understand the nature of the goods, a brief background of the cellular network system is required to be understood, as per literature supplied to us on which the reliance was placed by the Tribunal as well.

"A Cellular Network comprises of Main Switching Centre (MSC) operating in tandem with the following:

- **Base Transceiver Stations**
- Base Station Controller
- Transcoder
- Operation Maintenance Centre (OMC-R)
- Digital Cross Connect Systems.

BASE TRANSCEIVER STATION:

The Base Transceiver Station is the interface between the cellular network and the mobile subscriber. The basic function is to receive and transmit mobile calls from the subscriber to the caller through the GSM cellular network supported by BST equipment and the following ancillary equipments of BTS.

- Microwave Communication Equipments (Radio Terminals & Anntennas)
- Power Converter Unit
- Battery back-up Unit
- GSM & Microwave Antennas
- Installation/Ancillary items".

O. (ii) Tata Teleservices Ltd. Vs. Bharat Sanchar Nigam Ltd. and Ors., (2008) 10 SCC 556: The Hon'ble Supreme Court, while discussing the 'cellular system and topology' network stated as under:

"A cell in a cellular system is a circular area with a central transmitter/receiver base station. **BTS contains transmitter and receiver equipment as well as an antenna.** It is raised up on a tower or top of a building. BTS has a 360-degree antenna which is tuned to create a cellular area. When a user turns a phone on, its phone number and serial number are broadcast within the local cell.

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The BTS picks up the signals and informs the Switching office that a particular device is located within its area. This information is recorded in the switching office for reference. An actual call takes place when the user enters a phone number and its the Send button. The cellular system selects a channel for the user to use during the duration of the call. As users travel, they may move from one cell to another, necessitating a handoff and the selection of a new channel. While in the vicinity of a cell, mobile phone users are under the control of the transmitter/receiver in that cell. A handoff takes place when the base station in one cell transfers control for a user's call to a base station in another cell."

P. (iii) Bharat Sanchar Nigam Limited and Anr. v. Union of India 2006 (2) S.T.R. 161 (S.C.): The Supreme Court observed:

"**104**. Briefly, the subscriber originates/generates his voice message through the handset. The transmitter in the handset converts the voice into radio waves within the frequency band allotted to the Petitioners. The radio waves are transmitted to the switching apparatus in the local exchange and thereafter after vefirying the authenticity of the subscriber; **the message is transmitted to the telephone exchange of the called party and then to the nearest base Transceiver Station (BTS). The BTS transmits the signal to the receiver apparatus of the called subscriber,** which converts the signals into voice, which the subscriber can hear."

Q. (iv) Reliance Infocomm Ltd. Vs. Bharat Sanchar Nigam Ltd. and Ors., AIR 2008 SC 2533: The Supreme Court observed as follows:

"32.One aspect on technoloby needs to be explained. BTS is different from MSC in terms of functionality. **The function of BTS primarily is confined to transmission and communication.** On the other hand, MSC is an exchange. Two databanks exist in the MSC, namely, Home Location Register ("HLR") and Visitor Location Register ("VLR"). HLR is a central data base that keeps track of the location a user is currently at; the VLR is a data base associated with a base station that knows all the users that are currently within the coverage area of a specific base station. If a mobile station moves across a cell boundary, a different base station becomes the serving BS. In other words, the MS is handed over from one base station to another without interrupting the call. This process is known as "Handover". (see: page 34 of the book entitled "Wireless Communications" by Andreas F. Molisch under the caption "User Mobility.") The important thing to be noted in this case is we are basically concerned with the leby of ADC charge-on a given call. The identity of the call and the caller is checked not by the

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base station but by the MSC. The Numbering plan is also in MSC and not the BTS. In this case, we are essentially concerned with the existing service in MSC on the basis of wich a charge could be levied depending on the type of the originating call. If a Walky call is to be classified as FWA service then the integrity of the Numbering plan would stand infringed. The Numbering plan is co-related to the Databaswe in the MSC. It is for this reason that we have examined the differences in the services, namely, cellular, cordless, FWA etc. it is for this reason that we have analysed the types of devices, namely, fixed device, nomadic device, low mobility, high mobility etc. in our view, MSC is the intelligent network **and BTS is only a receiver and transmitter. The function of BTS is to receive the signals and forward the same to the MSC.** MSC is the intelligent part of the network. MSC has the registration of numbers to be served by the service provider, the mechanism to identify the caller is not with the BTS, HLR is the primary database for all subscriber information, VLR is a network entity whose main function is to provide service to subscribers who are served from a different HLR. The MSC communicates with the VLR to obtain subscriber information to support call processing. The VLR gets its information about visiting roamers from HLR. (see: "Wireless Intelligent Networking" by Gerry Christensen, Paul G. Florack and Robert Duncan at p. 77). According to Wikipedia, Fixed Wireless Terminal ("FWT") units differ from conventional mobile terminal units operating within cellular networks-such as GSM-as FWT or desk phone is limited to a permanent location. Therefore, all the above literature and reference books indicate that FWA is a service which is limited to permanent location. The singnificance of FWA is that it dispenses with the last mile wireline connectivity and to that extent it is cost effective. The wireless access point is a device that connects wireless communication devices together to form a wireless network. Wireless Access Point ("WAP") usually connects to a wired network. (see: Wikipedia)".

R. (v) The State of Andhra Pradesh vs. M/s. Bharat Sanchar Nigam Limited, Hyderabad, MANU/AP/0696/2011: In this case, the Andhra Pradesh HC held:

"The functioning of the mobile telecommunication system/ network involves the following steps:

1. the subscriber originates/generates/produces the voice by speaking through the handset;
2. **this voice generated by the subscribers is transmitted on airwaves to the BTS;**

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3. **BTS then transmits the said voice to a modified 'Flexent' wireless platform on airwaves/cables;**

4. The modified 'Flexent' in turn verifies and validates the authenticity of the subscriber and, upon such verification, transmits the said voice to the local exchange via BZ-SP on cables;

5. the LE switches the voice of the subscriber to the Called Party which voice is again carried from LE to modified 'Flexent' via BZ-SP to BTS to the Called Party's handset/telephone instrument all on airwaves."

S. Further, the issue regarding whether DRU is part of BTS has been settled vide the impugned Order itself. The impugned Order states that MNIT experts, during the cross-examination have clarified that "DRU is an integral part of the BTS. Therefore, the arguments and evidences submitted earlier in support of DRU being an integral part viz. Ericsson Certificate through its Senior Specialist (Products and Projects), Mr. Pankaj Pandey, publication of the 'EJL Wireless Research LLP', to 'RBS 2106 Inltallation and integration Manual' prepared by Ericsson, document titled "Reducing TCO with the new RBS 2x16" authored by Stephen Carson, Christer Friberb et al. are not reiterated by the Appellant.

T. From the above submissions expert opinion it is amply clear that BTS is a transmission apparatus and DRU is an integral part of the BTS and thus is squarely classifiable under entry 28 of Schedule IV-A as 'part of 1 to 28 above' (which includes BTS falling under entry 12).

U. For the purpose of classification, specific entry would prevail over the residuary entry when a particular good is capable of being classified under a specific entry.

It is a settled law that if there is a specific entry then the items covered or intended to be covered under that entry cannot be said to be covered in residuary entry. Every word or entry in a taxing statute has definite meaning or scope. The legislature has the wisdom to classify or put particular items in the Schedule.

It is submitted that various judicial precedents have been propounded strengthening the view that when a particular good is capable of being classified under a specific entry, the recourse to residuary Entry should be ingnored. Following are the judgments enunciated by the Hob'ble Supreme Court in this regard:

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V-1. In re: **Shanti Sugicals Private Limited, 2009 (246) ELT 836**

"23. In my opinion the basics of the classification are that initially an attempt should be made to search a specific entry where the goods can be classified as per the nomenclature and the constituent material. In case no specific entry is available the next attempt should be to find the nearest entry where the goods can be classified. In case both the attempts turn to be futile then the attempt should be made to consider the end uses, the inclusion and exclusion clauses provided in the section notes, the chapter notes and the explanatory notes given the HSN. While doing so the interpretation of the said Note will depend upon the context in which the entries have been worded. If an entry is clearly worded and is broad in character, the same would lead to the conclusion. An entry is to be given its ordinary meaning. If any goods fit in within one entry, the same for any purpose would not be held to be included in the other and particular residuary."

V-2. Moorco (India) Limited v. CCE, Madras, 1994 (74) ELT 5 (Supreme Court)

"The specific heading of classification has to be preferred over general heading. The clause contemplates goods which may be satisfying more than one description. Or it may be satisfying specific and general description. In either situation the classification which is the most specific has to be preferred over the one which is not specific or is general in nature. In other words, between the two competing entries the one most nearer to the description should be preferred. Where the class of goods manufactured by an assessee falls say in more than one heading one of which may be specific, other more specific, third most specific and fourth general. The rule requires the authorities to classify the goods in the heading which satisfies most specific description.

V-3. Dunlop India Ltd. & Madras Rubber Factory Ltd. v. Union of India (UOI) and Ors. (1976) 2SCC 241

"37. It is good fiscal policy not put people in doubt and quandary about their liability to duty When a particular product like V.P. Latex known to trade and commerce in this country and abroad is imported, it would have been better if the article is, put under a proper classification to avoide controversy over the residuary clause. As a matter of fact in the Red Book (import Trade Control Policy of the Ministry of Commerce) under item 150, in

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ction II, which relates to "rubber, raw and gutta percha, raw", synthetic latex including vinyl pyridine latex and copolymer of styrene butadiene latex are specifically included under the sub-head "Synthetic Rubber" We do not see any reason why the same policy could not have been followed in the I.C.T. book being complementary to each other. When an article has by all standards, a reasonable claim to be classified under an enumerated item in the Traiff Schedule, it will be against the very principle of classification to denvat the parentage and consign it to an orphanage of the residuary clause."

V-4. State of Maharashtra v. Bradma of India Ltd (2005) 2 SCC 66

"7. ..... Both the Tribunal and the High Court commonly enunciated the principle that a specific entry would override a general entry. In addition we would add, and as has been held in CCE v. Wood Craft Products Limited 1995 ECR417(SC), resort has to be had to the residuary heading only when a liberal construction by the specific heading cannot coer the goods in question. The language of Entry 97(b) clearly shows, by use of the phrase "other than those specified elsewhere" that it is not only a residuary entry but also that electronic systems, instruments etc. may be classified under other entries. Entry 90 on the other hand does not contain any words of limitation. The items mentioned therein would cover every species thereof irrespective of the mode of their operation. Cash registering machines are specifically mentioned. In the absence of any limitation or qualification as to the different kinds of cash registering machines, there is no reason to read in any such qualification and limit the entry to particular kinds of cash registering machines."

V-5. M/s Bharat Forge and Press Industries (P) Limited v. CEE, Baroda (1990) 1 SCC 532

"4. The question before us is whether the department is right in claiming that the items in question are dutiable under tariff entry 68. This, as mentioned already, is the residuary entry and only such goods as cannot be brought under the various specific entries in the tariff should be attempted to be brought under the residuary entry. In other words, 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, resort cannot be had to the residuary item..."

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V-6. Hindustan Poles Corporation v. Commissioner of Central Excise, Calcutta (2006) 4SCC 85

"31. We have heard learned Counsel for the parties at length. We have also carefully perused the pleadings and examined a series of cases decided by this Court. The following conclusions are irresistible.

1) The process carried out by the appellants do not change the basic identity or original character of M.S. Welded Pipes to make it a new marketable product leading to manufacture as defined under Section 2(f) of the Central Excise Act, 1944.

2) The burden to prove manufacture is always on the Revenue. In the instance case the Revenue has completely failed to prove that the activity carried out by the appellant amounts to manufacturing. It is settled law that when one particular item is covered by one specified entry, then the Revenue is not permitted to travel to residuary entry.

3) The residuary entry is meant only for those categories of goods which clearly fall outside the ambit of specified Unless the Department can establish that the goods in question can by no conceivable process of welding be brought under any of the tariff items, resort cannot be had to the residuary item."

V-7. The Commissioner of Central Excise, Bhubaneshwar-I v. Champdany Industries Limited (2009) 241 E.L.T. 481

"32. In coming to the said conclusion, this Court relied on an earlier three-Judge Bench decision of this Court in Dunlop India Ltd. v. Union of India and Ors. (1976) 2 SCC 241, para 35. In the said paragraph this Court very elegantly clarified the position in the following words:

34. It is, thus, clear that the aforesaid principle has virtually been hardened into a rule of law by reason of the consistent view taken by this Court. The Revenue's stand in this case in purporting to justify the classification of the goods manufactured by the respondent company under a residuary heading. Therefore, cannot be appreciated.

35. ...When an article has, by all standards, a reasonable claim to be classified under an enumerated item in the Tariff Schedule, it will be against the very principle of classification to deny it the parentage and consign it to an orphanage of the residuary clause.....

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V-8. Mauri Yeast India Pvt. Ltd. v. State of U.P. and Anr. (2008) 5 SCC 680

"48. We, therefore, are of the opinion that if there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred."

The interpretation given by both the lower authorities in the impugned Order would render the entry 12 of Schedule IV, Part-A to the VAT Act to a redundant and otiose entry. The very purpose of the phrase "transmission apparatus" used in entry 12 of Schedule IV-A to the VAT Act will remain unfulfilled in absence of a correct interpretation. It is a well settled principle of construction that various provisions of a statute have to be interpreted harmoniously, so as to avoid any provision being rendered redundant.

As submitted above at Para A and B in greater detail, it is evident that BTS is a transmission apparatus and is covered under Entry 12 of Schedule IV, part-A to the RVAT Act. Since, DRU is an integral part of BTS, as is also acknowledged by the Commercial taxes Oficer in the Impugned Order, DRU should be classified under Entry 65 of Schedule IV read with Entry 12 and 28 Part-A of the RVAT Act. Thus, the classification of DRU under the residual entry number 1 of Schedule V of the RVAT Act goes against the very principles of classification to deny it to the orphanage of the residuary clause.

It is submitted that the issue in the current appeal is similar to the case of KS Technosoft Pvt. Ltd., Jaipur, P.%C(67)/ACCT/VAT IT/TAX Rate/13/130. In this case, an application was filed by KS Technosoft Pvt. Ltd., Jaipur, under Section 36 of the RVAT Act for determination of rate of tax applicable on devices for transmission of data over wireless network via GSM (Vehicle Tracking Devices). The Committee was of the view that that devices for transmission of data over wireless network via GSM (Vehicle Tracking Devices) after loading customized software has not been defined in any of the schedule I, II, III, IV of RVAT Act, 2003. Therefore the goods are taxable at the rate as mentioned in Shedule V appended to the RVAT Act. As per the CTO, the Vehicle Tracking Device, which transmits data over wireless network via GSM, should be rightly covered in the category of part/accessory of motor vehicle and should be classified under Schedule 6, item No. 8 i.e. all types of motor vehicles (other than tractors) including two wheelers and three wheelers including their parts and accessories. However, in the Determination Order it was held that the GSM Vehicle Tracking Device is part of the Transmission

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Apparatus, which has customized software uploaded as per the requirements of the customers, and is covered by the term "parts of the Transmission Apparatus" and is thus classified under the category of "IT Products.

14. विद्वान अभिभाषक ने अपने तर्क के समर्थन में निम्न न्यायिक दृष्टांत प्रस्तुत किये :—

A. **Hotline Electronics Limited v. CCE, Noida, 2010 (261) ELT 872**
B. **Madhya Pradesh Industries vs. UOI[AIR 1966 SC 671]**
C. **S.N Mukherjee vs. Union of India [AIR 1990 SC 1984]**
D. **State of West Bengal vs. Atul Krishna Shaw [1990 SC 2205]**
E. **State of Uttaranchal and Another vs. Sunil Kumar Vaish (2011) 8 SCC 670**
F. **Kumaragiri Textiles Limited v. State of Tamil Nadu and Others, [2009] 21 VST 0161**
G. **Mustan Taherbhai v. Commissioner of Central Excise and Customs, 2011 (265) ELT 161 (Supreme Court)**
H. **V.K. Enterprises v. Commissioner, Trade Tax, U.P. [2007] 007 VST 705**
I. **Indian Oil Corporation Limited v. Union of India, 2010 (262) ELT 94 (Gujarat)**
J. **ACTO v/s London chemical's works- 45 Tax Update 221**
K. **22 Tax Update 297**
L. **(2008) 12 VST 43 Madras**
M. **(1991) 82 STC Page 83**
N. **(1984) 57 STC 89**
O. **25 VAT Reporter 194**
P. **AIR (1992) SC 711**
Q. **34 Tax Update 189**
R. **9 VAT Reporter 191**
S. **(2009) 23 VST 249 (SC)**
T. **(2007) 19 Tax Update 85**
U. **(2012) 32 Tax Update 3**
V. **(2014) 40 Tax Update 47**

15. प्रत्यर्थी विभाग की ओर से विद्वान उप—राजकीय अभिभाषक ने कर व ब्याज के बिन्दु पर अपीलीय प्राधिकारी के आदेश का समर्थन किया व इस बिन्दु पर अपीलार्थी की अपील अस्वीकार करने की प्रार्थना की गई।

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16. अपील संख्या 314/2015 में अपीलार्थी विभाग की ओर से विद्वान उप—राजकीय अभिभाषक ने शास्ति के बिन्दु पर कर निर्धारण अधिकारी के आदेश का समर्थन किया तथा अपील स्वीकार करने की प्रार्थना की गई।

17. अपीलार्थी के विद्वान अभिभाषक द्वारा प्रस्तुत समस्त न्यायिक दृष्टातों का ससम्मान अध्ययन किया गया। शास्ति के बिन्दु के अलावा अन्य समस्त न्यायिक दृष्टांत विधि व तथ्यों के बिन्दु पर भिन्नता के कारण लागू होने योग्य नहीं पाये जाते है।

18. हस्तगत प्रकरण में विवादित बिन्दु यह है कि डबल रेडियो यूनिट (डीआरयू) की बिक्री पर कर दर क्या होगी? डबल रेडियो यूनिट (डीआरयू) को BTS (Base Transceiver Station) का पार्ट होना बताते हुए वैट अधिनियम की अनुसूची—IV के पार्ट—ए की प्रविष्टि संख्या—10 व 28 के आधार पर कर दर 4 प्रतिशत होगी अथवा 12.5 प्रतिशत होगी ?

19. BTS (Base Transceiver Station) का विस्तृत विवरण, तत्व—कार्य, स्थापना निम्न प्रकार है :—

BASE TRANSCEIVER STATION

OVERVIEW

The Base Transceiver Station (BTS) consists of a single rack or cabinet that houses the necessary elements for a point to multi-point RF communicationnetwork. A single BTS may contain 1 or 2 Radio Base Units (RBUs). Each RBU contains all necessary Transmit/Receive equipment required for the operation of a single sector or cell. A modular design provides for multiple co-located BTSs. The architecture of the system is flexible, and can accommodate small or large numbers of subscribers. It can also be adapted for use in rural, suburban, and urban environments.

1.1.1 INTRODUCTION

The Eagle Telephonics, Inc. AirLink 8000 system is a WLL Specific system based on digital radio technology. Specifically, it employs direct sequence, spread spectrum based, Synchronous CDMA (SCDMA) techniques over the air link to provide local access to subscribers. It offers very high quality, highly reliable service at costs that are very competitive with the wireline solutions. The system has very high spectral efficiency and thus can provide wireline quality service with limited available bandwidth. Its large dynamic range allows it to be deployable in virtually all environments, meeting specific needs of dense urban, suburban, and rural communities in an economical way.

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Some of the key attributes of the system are:

-- Wireline voice quality delivered at 32 or 64 kbps.

-- High throughput for data and fax applications with 32 or 64 kbps throughput.

-- High service reliability with good tolerance for noise and ingress.

-- Secure airlink that is virtually impossible to break into or eavesdrop.

-- CLASS services are supported.

-- Enhanced services like priority/emergency calling - both inbound and outbound.

-- Full switching services available.

For the network operator, the system provides several benefits:

-- Advanced graphical operator interface.

-- Equipment cost per access line is low and very competitive with average wireline costs.

-- In typical deployments, over 70% of the per line equipment cost is on the subscriber end; thus most of the investment needs to be made only when signing up paying customers.

-- Quick and easy installation and provisioning process.

-- Low maintenance costs reduce the life cycle costs and total cost of ownership.

-- Theft deterrent system (stolen or misused equipment will not operate). With properly implemented procedures, even installation/maintenance staff cannot beat the system.

-- Ability to provide high quality digital data services at 64 to 256 kbps and beyond increases the appeal to business and discriminating customers and provides opportunities for premium revenue producing services.

-- Economically viable over a wide range of subscriber densities and hence can be used for stand alone as well as overlay networks. It can also easily grow with the subscriber population.

-- The system will grow with customer needs and be able to provide higher bandwidth data/video services.

1.1.2 GENERAL ELEMENTS

The diagram below depicts the elements of the system.

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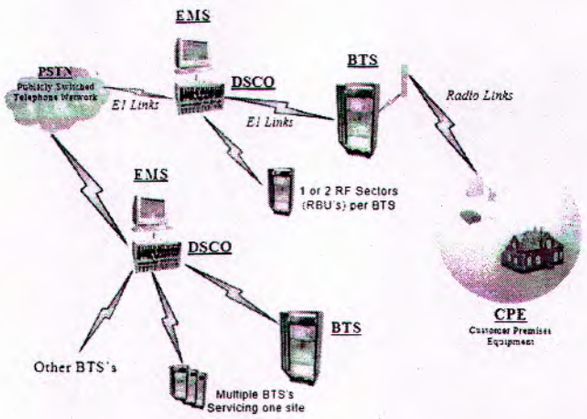


As depicted, there are four main elements of the system:

-- The Digital Switching Central Office (DSCO) connects the system to the rest of the public network.

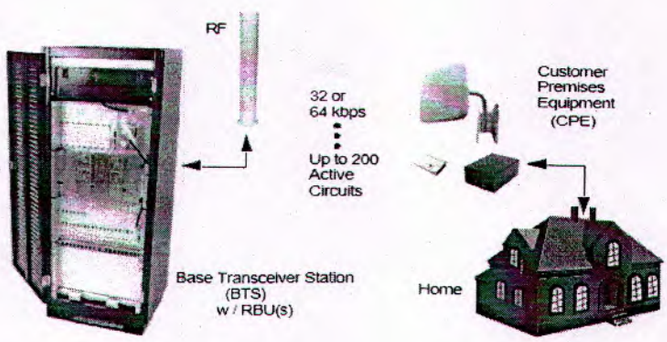
-- The Base Transceiver Station (BTS), which each may include the electronics for 1 or 2 RF sectors (RadioBase Units, or RBUs), controls and aggregates large numbers of radio links.

-- The Customer Premises Equipment (CPE) provides the subscriber end of the radio link and provides thestandard wireline interface to the customers telephony equipment

-- The Eagle Management Suites (EMS) Software, which provide control to the overall system.

1.2 GENERAL DESCRIPTION

The AirLink 8000 system Base Transceiver Station is described in this section. The design philosophy hasbeen to use advanced technology in order to create a point to multi-point system with high bandwidthefficiency, and comparatively large range. Attention has been paid to expandability of future services and requirements, high reliability, service security, fraud prevention, emergency services, and many other features.



The following information entails the workings of the BTS in conjunction with the CPE. Antenna characteristics are matched to the CPE along with controls signals.

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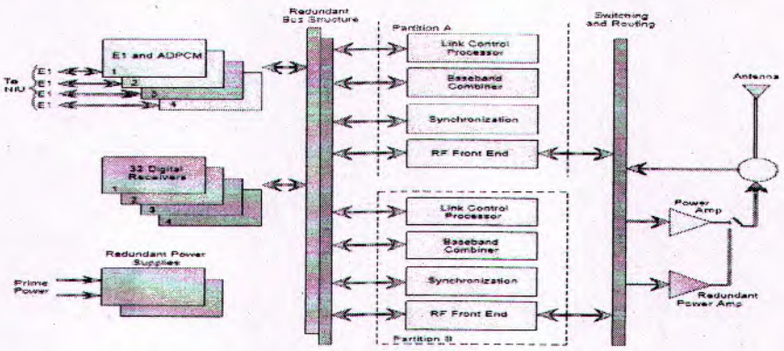
See the CPE Overview for a more complete description of the CPE.

1.2.1 BLOCK DIAGRAM OF THE BTS



Multiple RBUs may be co-located to configure local cells or scattered to form multiple cells. Two RBUs can be located in each Base Transceiver Station Cabinet. Each RBU uses a separate RF transmitter and receiver front end but may share a single omni antenna with other RBUs or use a dedicated antenna.

An RBU is configurable such that it is capable of operation in a contiguous cell deployment wherein the operation of any one cell does not prohibit the operation of any adjacent cells.

The modular nature of the RBU accommodates a combination of redundant and high reliability hardware to provide the necessary resiliency to provide a high MTBF. The RBU interfaces with the DSCO via one to four E1 connections. An Operation, Administration, Maintenance, and Provisioning (OAM&P) interface is provided for each RBU, but the standard OAM&P interface is to the DSCO.

The RBU connects to the Network Interface Unit (DSCO) which is the Eagle Telephonics, Inc. DSCO, via multiple E1 type connections. 75-ohm BNC or 120 ohm dB connector interfaces are available. Optional Forward Earthing is available on both interfaces.

This E1 connection may be implemented via various interface links such as wire, optical fiber, or microwave radio.

All external signal cables and field replaceable modules are accessible from the front of the Base Transceiver Station, with the exception of the antenna cables, which are accessible from the top of the Base Transceiver Station.

1.2.2 OVERALL SYSTEM

For purposes of understanding the placement of the BTS in the AirLink 8000 system, the following diagram shows all of the elements of the Eagle AirLink 8000 system:

The four main elements are the BTS, CPE, DSCO and EMS:-

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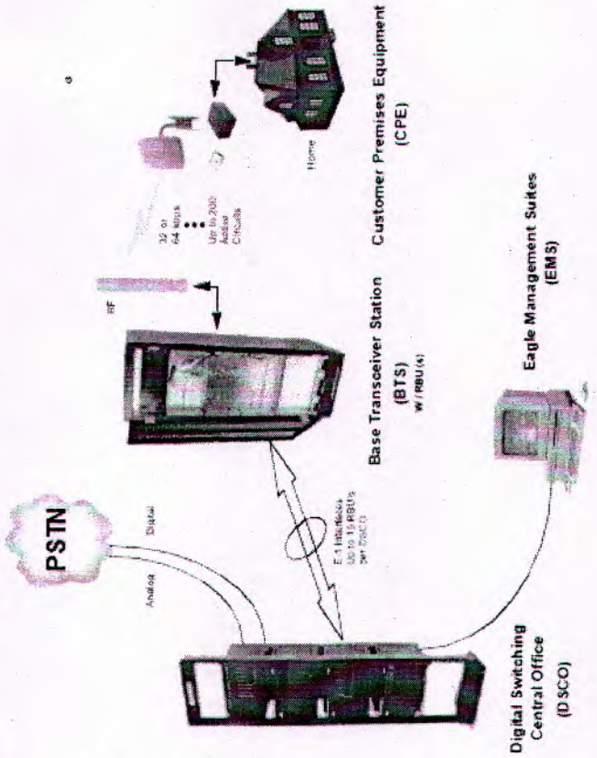

1.3 Hardware Description.

There are three primary subsystems in the Eagle Telephonics, Inc.'s AirLink 8000 system — the Eagle Telephonics, Inc. Digital Switching Central Office (DSCO), Base Transceiver Station (BTS), and Customer Premises Equipment (CPE). The CPE itself has three primary components — the Subscriber Unit (SU), the Network Termination Unit (NTU), and the Uninterruptible Power Supply (UPS). The DSCO and the BTS share the Eagle Management Suites (EMS) for all OAM&P functions, central office control and subscriber programming. The DSCO connects to the public telephone network via analog or digital trunks. The BTS connects to the DSCO using E1 trunks and to its master antenna using a coaxial cable. The SU communicates with the BTS via the radio interface. At the customer premises the NTU serves as the connection point between the SU and the subscriber's standard telephony termination point, and the UPS interfaces to the subscribers primary power using a standard cable. Further details are presented below along with appropriate diagrams.

1.3.1 Digital Switching Central Office

The Digital Switching Central Office (DSCO) is the system's interface to the public network. Its primary purpose is to provide the specific protocols and signaling that are required by the public network. These protocols can vary by the country as well as by the customer and even by the connecting point in the network.

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The DSCO can connect to a maximum of 15 RBUs using 1 to 4 E1 connections per RBU with 4 E1s needed for a fully populated RBU. In addition, each DSCO may be configured for a maximum of 10,000 subscribers. Time Slot 16 on each E1 trunk is used for passing control information between the DSCO and the attached RBUs as well as for passing information to and from the controlling EMS. Specific functions provided by the DSCO include:

-- Provisioning of dialtone to the Subscriber Units

-- Set up and tear down of voice and data calls

-- Billing system interface

-- Call priority management (drop least priority when all channels are used)

-- Channel reassignment for calls in progress

-- Detection of hook flash to enable POTS+ calling features

-- 32 to 64 kbps rate change initialization

-- Pay phone capability (12/16 kHz tone detection, line reversal)

-- Priority and emergency number calling

-- Accommodation of country specific signaling interfaces such as E&M, R2, R2 variants, V5.1, V5.2, C7, and C7 variants

-- System modularity: analog/digital options for both line side and trunk side

-- Full redundancy and hot swap for all circuit cards

Note: See the Eagle Telephonics, Inc. Installation and Maintenance Manual (IMM) for complete details of operation and description for the DSCO.

1.3.2 Base Transceiver Station

The BTS consists of a standard front access 19" telephony equipment rack (31U high), populated with up to four equipment subracks. The subracks provide all the functionality required to interface to the DSCO and may include the electronics for 1 or 2 Radio Base Units (RBUs) which provide radio communication to all CPE within a cell or sector. The RBUs are connected to external antennas that communicate with the SUs.

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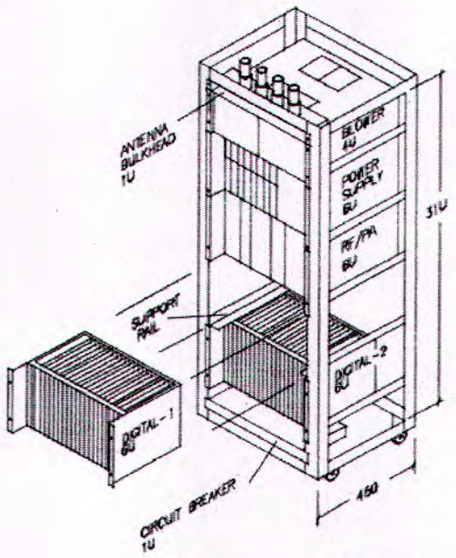

Base Transceiver Station - Mechanical

1.3.3 Base Transceiver Station - Mechanical

The antennas can be located up to 100 meters from the BTS using a 50 W coaxial cable. The antenna location is chosen to optimize transmission characteristics to the served SUs (principally line of sight). The RBU is fully redundant and all field replaceable units are hot-swappable. RBU accepts 48 or 60 VDC power with 15% tolerance.

1.3.4 Eagle Management Suite

The EMS is a personal computer based platform that is used to provide all the Operations, Administration, Maintenance, and Provisioning (OAM&P) control for the system. The EMS is hosted on a Windows NT® compatible PC platform and uses a Graphical User Interface (GUI) to facilitate operator inputs and report system information. Functions managed by the EMS include initiation, control, and data logging of all system wide tests, alarm reporting, operator entry of system parameters, and entry and maintenance of subscriber information such as priority, ID, and phone number. The EMS also acts as the administration terminal for system configuration and reporting.

1.3.5 Customer Premises Equipment

The Customer Premises Equipment consists of three separate hardware units — the Subscriber Unit (SU), the Network Termination Unit (NTU) and the Uninterruptible Power Supply (UPS). All of the CPE units are located at or near the end user's location. A typical installation would find the SU located on an exterior wall or rooftop to enable wireless communication with the RBU antenna, the NTU mounted at a ground accessible exterior point on the customer building, and the UPS located within the building.

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1.11 GENERAL FUNCTIONS

1.11.2.1 Protocol between RBU and SU

Command and status communication between the RBU and SU is provided via overhead control bytes contained in the active channel frame or in a frame sent on a 32 kbps side channel.

1.11.2.2 Antenna

An antenna with an N-type female connector should be located as close to the Base Transceiver Station as possible. This antenna may be mounted on a tower, pole, building or suitable structure.

1.11.2.3 RF Cable

The length of the 50 Ohm coaxial RF cable from the Base Transceiver Station to the antenna is site specific and is recommended to be type LDF5-50A manufactured by Andrew (attenuation for 100m of type LDF5-50A cable is approximately 6 dB at 2 GHz and 10 dB at 4 GHz). An N-type male connector is specified for both ends.

1.11.2.4 Grounding

A chassis ground stud is provided for connecting the Base Transceiver Station to a required earth ground point provided by the installer. ESD protection of the Base Transceiver Station is provided through hardwired chassis connection to earth and a local ground strap attachment point. All grounding should be in accordance with local code.

1.11.2.5 Prime Power Interface

The Base Transceiver Station accepts a positive ground DC input voltage source 40.8 through 69 VDC.

Terminal screws located inside the back of the Circuit Breaker Assembly are available to connect prime power.

1.11.2.6 System Health Monitor Function

System health is periodically monitored and results are stored at the RBU. Where possible the RBU and SU detect faults and isolate them to the failing Field Replaceable Unit (FRU).

Request for/access to system health data Requests for system health information come through the Network Element Management System (EMS) which is connected to the RBU via the common channel signaling interface to the DSCO. Also, health information and command BIT can be accessed through the maintenance terminal.

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1.11.2.7 System Health Data Storage

Complete current system health status is stored in the RBU volatile memory. The status is updated continuously. Health status is retrieved by the EMS at intervals of approximately 10 minutes. The data is stored in non-volatile memory at the EMS for a period of a least 48 hours.

1.12 Built-in Test (BIT) Requirements

Built-in hardware and software tests exist down to the FRU level to attempt to identify non-functional FRUs as rapidly as possible. As a minimum the internal hardware tests for each FRU attempt to indicate its operational status at Power-On and upon request from the monitoring unit. The software tests reside both internally and externally to the FRU and attempt to confirm the functional status of the FRU. Application of BIT is dependent upon the current state or mode of the FRU(s). The three state conditions are described as follows:

1.12.1 Initialization State.

A cold start or power-on reset on the FRU forces this state. BIT is applied immediately with the results of the test used by software to determine the follow-on state. A successful BIT result forces a transition to an in-service state where as an unsuccessful BIT result forces a transition to the out of Service State.

1.12.2 On-line State.

This state defines the FRU as active and in-service. The FRU will be continually monitored or polled for status. BIT may be applied anytime a fault is suspected in the FRU. BIT may also be applied periodically whenever the FRU is idle as part of routine testing such that it does not interfere with active users.

1.12.3 Off-line State.

This state defines the FRU as out of service. BIT can be applied at anytime under control of the software or at the request of maintenance personnel.

20. माननीय उच्चतम न्यायालय द्वारा न्यायिक दृष्टान्त **ए.आई.आर. 1989 एस.सी. 627 कलेक्टर ऑफ सेंट्रल एक्साईज, कोयम्बटूर बनाम मैसर्स प्रोटीन प्रोडक्ट्स ऑन इण्डिया लिमिटेड** में **Product** का निर्वचन करते हुए निम्न व्यवस्था दी गयी है :—

"The word "product" is defined in Webster's Comprehensive Dictionary as "anything produced or obtained as a result of some operation or work". Whether such derivation is by a simple physical process or by a chemical reaction would seem to make no difference to the end product. Buttermilk, for instance, does not cease to be a milk product merely because a chemical process is involved in the transformation."

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21. माननीय उच्चतम न्यायालय द्वारा न्यायिक दृष्टान्त **(1965) 2 एस.सी.आर. 811 शाह छोटालाल लल्लूभाई व अन्य बनाम चैरिटी कमिश्नर, बॉम्बे** में निम्न व्यवस्था दी गयी है :—

> "Specify. The word "specify" as used in Section 26A of the Indian Income-Tax Act, 1922 and Rule 2 of the Rules framed there under mean **mentioning describing** or **defining** detail. It does not mean expressly setting out in fractional or other shores.

इसी प्रकार माननीय उच्चतम न्यायालय द्वारा न्यायिक दृष्टान्त ए.आई. आर. **1965 एस.सी. 1411 कैलासा साराभैया बनाम सी.आई.टी.** में निम्न व्यवस्था दी गयी है :—

> "Under the Income Tax Act, 1922, the words 'specify' is used as meaning mentioning, describing or defining in detail: it does not mean expressly setting out in fractional or other shares."

22. किसी भी वस्तु की प्रकृति का निर्णय करने के सम्बन्ध में माननीय उच्चतम न्यायालय द्वारा **सिविल अपील संख्या 779—783/1997 मैसर्स मूलर एण्ड फिप्स (इण्डिया) लिमिटेड बनाम कलेक्टर ऑफ सेंट्रल एक्साईज, बॉम्बे—I में पारित निर्णय दिनांक 05.05.2004** में निम्न व्यवस्था दी गयी है :—

> **"held that "what is required to be considered in the matters of this nature where commodity taxation is taken up by the state authorities the court should be guided by the manner of classification of the goods which are brought to tax rather than the etymological meaning of the product in question or expert's opinion thereto."**

23. राजस्थान मूल्य परिवर्धित कर अधिनियम की धारा 4 निम्न प्रकार है —

4. Levy of tax and its rate. —

(1) Subject to the other provisions of this Act and the provisions of the Central Sales Tax Act, 1956 (Central Act No. 74 of 1956), the tax payable by a dealer under this Act, shall be at such point or points, as may be prescribed, in the series of sales by successive dealers and shall be levied on the taxable turnover of sale of goods specified in Schedule III to Schedule VI at the rate mentioned against each of such goods in the said Schedules.

24. राजस्थान मूल्य परिवर्धित कर अधिनियम की अनुसूची—IV की प्रविष्टि 65 निम्न प्रकार है —

SCHEDULE IV

GOODS "[TAXABLE AT 4%]

S. No.	Description of Goods	Rate of Tax %	Conditions if any
1	2	3	4
65.	I.T. Products as specified in Part-A of this Schedule	4	

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25. कर निर्धारण अधिकारी द्वारा पारित आदेश दिनांक 11.04.2014 के पृष्ठ 4 पर निम्नानुसार वर्णन किया गया है –

"दिनांक 24.10.2013 को व्यवहारी के अ0प्र0 श्री गुंजन मिश्रा व श्री सतीश आर (**Business Controller**) के साथ कानोता (बस्सी) आगरा रोड़, जयपुर स्थित वास्तविक **BTS site** पर जाकर **BTS** की संरचना एवं कार्यप्रणाली को मैने देखा व समझा **BTS (Base Transceiver Station)** एक स्टेशन होता है जिसके विभिन्न पार्ट यथा ऐन्टीना, डीआरयू, स्वीचिंग यूनिट (डीएक्सयू), ऊर्जा आपूर्ति उपकरण, पावर एम्प्लीफायर, बेस बैंड कार्डस आदि होते है। **BTS** की संरचना में ऐन्टीना **BTS** के पास स्थित टॉवर के ऊपर लगे हुए होते है तथा शेष पार्ट टॉवर के नीचे स्थित कमरा/केबिन में स्थापित रहते है तथा उक्त कमरे/केबिन में तापमान नियंत्रण हेतु वायु शीतलक यंत्र लगा हुआ होता है। टॉवर पर लगे हुए ऐन्टीना विद्युत चुम्बकीय तरंगों को प्राप्त करते है तथा उक्त तरंगे केबिल के जरिये डीआरयू को प्राप्त होती है। डीआरयू उक्त तरंगों की प्रोसेसिंग के पश्चात् पुनः केबिल के जरिये ऐन्टीना को प्रेषित करता है तथा ऐन्टीना ऐसी प्राप्त तरंगों को हवा में संप्रेषित करता है। इस प्रकार डीआरयू बीटीएस में एक पार्ट के रूप में विद्यमान रहता है तथा बीटीएस के उन्य पार्टों की परस्परता में सामूहिक रूप से तरंगों को संप्रेषित करने का कार्य करता है। इस प्रकार उपर्यूक्त सभी पार्ट्स मिलकर एक **BTS (Base Transceiver Station)** का निमार्ण करते है।"

Part-A

[see s.No. 65 of Schedule IV]

GOODS UNDER CATEGORY OF IT PRODUCTS

S. No.	Description of Goods	Rate of Tax%
1	2	3
1.	Word processing machines, Electronic typewriters.	4
2.	Electronic calculators	4
3.	Computer system and peripherals, computer printers electronic diaries.	4
4.	D C Micro motors, Stepper motors of an output not exceeding 37.5 watts.	4
5.	Uninterrupted power supply (UPS).	4
6.	Permanent magnets and articles intended to become permanent magnet (ferrites).	4
7.	Electrical apparatus for line telephony or line telegraphy, including line telephone sets with cordless handsets and telecommunication apparatus for carriage-current line systems or for digital line systems; video phones.	4
8.	Microphones, multimedia speakers, headphones, earphones and combines microphone / speaker sets.	4

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1	2	3
9.	Telephone answering machines	4
10.	Prepared unrecorded media for sound recording or similar recording of other phenomena including Compact Disc (CD) and Digital Versatile Disc (DVD).	4
11.	IT software on any media.	4
12.	**Transmission apparatus other than apparatus for radio broad casting or TV broad casting. Transmission apparatus incorporating reception apparatus, celluler telephones.**	**4**
13.	Radio communication receivers, Radio Pagers.	4
14.	Aerials and antennas.	4
15.	LCD Panels, LED Panels.	4
16.	Electrical capacitors fixed, variable or adjustable (pre-set).	4
17.	Electrical resistors (including rheostats and potentiometers) other than heating resistors.	4
18.	Printed Circuits.	4
19.	Switches, Connectors and Relay for up to 5 amps at voltage not exceeding 250 volts, electronic fuses.	4
20.	Data / Graphic Display Tubes other than TV Picture tubes.	4
21.	Diodes, transistors & similar semi-conductor device, photo sensitive semi conductor devices, including photo voltaic cells whether or not assembled in modules or made-up in to panels; light emitting diodes; mounted piezo-electric crystals.	4
22.	Electronic Integrated Circuits and Micro assemblies.	4
23.	Signal Generators.	4
24.	Optical fibre cables and joining kits and joining materials thereof.	4
25.	Optical fibre and optical fibre bundles and joining kits and joining materials thereof.	4
26.	Liquid Crystal Devices, flat panel display devices.	4
27.	Cathode Ray Oscilloscopes, Spectrum analysers, Cross talk meters, gain measuring instruments, distortion factor meters, psophometres, network and logic analysers and Signal analysers.	4
28.	**Parts of 1 to 27 above.**	**4**

26. वेट अधिनियम में किसी भी वस्तु की कर दर श्रेणी निर्धारण के लिये केंद्रीय उत्पाद शुल्क अधिनियम एवं नियम की व्याख्या सुसंगत नहीं है तथा इसके निर्वचन लागू नहीं होते हैं। वेट अधिनियम में आई.टी. प्रोडक्ट के रूप में विनिर्दिष्ट नहीं होने की स्थिति में उसपर कॉमन पारलेंस का सिद्धान्त लागू नहीं होता है। वेट अधिनियम की अनुसूची—IV के क्रम संख्या—65 में आई.टी. प्रोडक्ट जो पार्ट—ए में अंकित है, पर कर की दर 4 प्रतिशत विहित की गई है। माननीय उच्चतम न्यायालय द्वारा पैरा संख्या 20 से 22 में यह व्यवस्था दी गई

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है कि न्यायालय को किसी भी वस्तु पर कर की दर क्या लागू होगी, इसके सम्बन्ध में सम्बन्धित अधिनियम में जिस प्रकार से वस्तु का वर्गीकरण किया गया है उसके अनुसार कर दर निर्णीत होनी चाहिए। न्यायालय द्वारा किसी व्युत्पत्ति विषयक के आधार पर अथवा किसी विषय विशेषज्ञ की राय के आधार पर वस्तु की कर दर का निर्णय नहीं किया जाना चाहिए। माननीय उच्चतम न्यायालय द्वारा पैरा 20 से 22 में दी गई व्यवस्था के प्रकाश में हस्तगत प्रकरण में उपरोक्त विस्तृत तथ्यात्मक विवेचना के पश्चात निष्कर्षित किया जाता है कि BTS (Base Transceiver Station) को अनुसूची—IV के पार्ट—ए में विनिर्दिष्ट नहीं किया हुआ है। BTS (Base Transceiver Station) अनुसूची—IV के पार्ट—ए में विनिर्दिष्ट नहीं होने के साथ "डबल रेडियो युनिट" भी अनुसूची—IV के पार्ट—ए में विनिर्दिष्ट नहीं है। BTS (Base Transceiver Station) अनुसूची—IV के पार्ट—ए में विनिर्दिष्ट नहीं होने के कारण आई.टी. प्रोडक्ट नहीं है। पार्ट 'ए' में विनिर्दिष्ट नहीं होने के कारण डबल रेडियो युनिट भी आई.टी. प्रोडक्ट नहीं है। आई.टी. प्रोडक्ट नहीं होने के कारण डबल रेडियो युनिट पर अनुसूची—IV की प्रविष्टि संख्या—65 में संदर्भित 4 प्रतिशत की कर दर लागू नहीं होगी। डबल रेडियो युनिट की राजस्थान में बिक्री पर 12.5 प्रतिशत की कर दर लागू होगी।

27. उपरोक्त विवेचन अनुसार अपीलार्थी व्यवहारी द्वारा बिक्रीत डबल रेडियो यूनिट (DRU) वेट अधिनियम की अनुसूची—V में विहित कर दर योग्य होने के कारण कर निर्धारण अधिकारी द्वारा इस पर 12.5 प्रतिशत की दर से करदेयता अवधारित करते हुए तदनुसार कर व ब्याज का आरोपण किये जाने में कोई विधिक त्रुटि नहीं की गयी है। इसी प्रकार अपीलीय अधिकारी द्वारा कर निर्धारण अधिकारी द्वारा आरोपित कर व ब्याज की पुष्टि किये जाने में भी कोई त्रुटि कारित किया जाना नहीं पाया जाता है। अतः अपीलार्थी व्यवहारी द्वारा प्रस्तुत अपील संख्या 1835/2014 अस्वीकार की जाती है।

28. जहां तक वेट अधिनियम की धारा 61 के तहत आरोपित शास्ति का प्रश्न है, उचित प्रतीत नहीं होती। यह निर्विवादित है कि अपीलार्थी व्यवहारी द्वारा अपने समस्त संव्यवहारों का इन्द्राज अपनी लेखा—पुस्तकों में किया हुआ है। माननीय उच्चतम न्यायालय के न्यायिक दृष्टान्त **(2010) 26 टैक्स अपडेट 01 मैसर्स श्रीकृष्णा इलेक्ट्रिकल्स बनाम तामिलनाडू राज्य एवं अन्य** एवं माननीय राजस्थान उच्च न्यायालय ने **वाणिज्यिक कर अधिकारी, प्रतिकरापवंचन श्रीगंगानगर बनाम मैसर्स दुर्गेश्वरी फूड लिमिटेड श्रीगंगानगर के न्यायिक दृष्टान्त (2012) 32 टैक्स अपडेट 03** में भी यही सिद्धान्त प्रतिपादित किया गया

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है कि कर दर से सम्बन्धित विवाद की स्थिति में व्यवहारी द्वारा अपने संव्यवहारों का इन्द्राज लेखा–पुस्तकों में किया हुआ होने पर वेट अधिनियम की धारा 61 के तहत शास्ति आरोपणीय नहीं है। अतः कर निर्धारण अधिकारी द्वारा वेट अधिनियम की धारा 61 के तहत शास्ति आरोपित किये जाने में विधिक त्रुटि की गयी है, जबकि अपीलीय अधिकारी द्वारा धारा 61 की शास्ति अपास्त किये जाने में कोई विधिक त्रुटि नहीं की गयी है। अतः अपीलार्थी राजस्व द्वारा प्रस्तुत अपील संख्या 314/2015 भी अस्वीकार की जाती है।

29. उपरोक्त विवेचन के मद्देनजर अपीलीय आदेश में किसी प्रकार का हस्तक्षेप अपेक्षित नहीं है। अपीलार्थी व्यवहारी द्वारा प्रस्तुत अपील संख्या 1835/2014 एवं अपीलार्थी राजस्व द्वारा प्रस्तुत अपील संख्या 314/2015 अपास्त किये जाने योग्य पायी जाती है।

30. परिणामस्वरूप अपीलार्थी व्यवहारी एवं अपीलार्थी राजस्व द्वारा प्रस्तुत दोनों अपीलें अस्वीकार की जाती हैं।

31. निर्णय सुनाया गया।

11/08/2016

(मनोहर पुरी)
सदस्य

(खेमराज)
अध्यक्ष