



2024/KER/1287

'C.R.'

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 9<sup>TH</sup> DAY OF JANUARY 2024 / 19TH POUSHA, 1945

WP(C) NO. 23630 OF 2016

**PETITIONER/S:**

M/S. PROFESSIONAL COPIER SERVICES INDIA (PVT) LTD  
34/ 491b, VETTIKATTUPARAMBU ROAD, EDAPALLY, TOLL  
GATE, KOCHI 682024, REPRESENTED BY ITS BRANCH  
MANAGER, VIJAYAN C.K.

BY ADVS.  
SRI.M.GOPIKRISHNAN NAMBIAR  
SRI.P.BENNY THOMAS  
SRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURYAN THOMAS  
SRI.RAJA KANNAN

**RESPONDENT/S:**

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, TAXES  
DEPARTMENT, SECRETARIAT, THIRUVANANATHAPURAM  
695001
- 2 THE COMMERCIAL TAX OFFICER  
1ST CIRCLE, COMMERCIAL TAXES, KALAMASSERY 683109
- 3 THE INTELLIGENCE OFFICER (IB) (ERNAKULAM)  
DEPARTMENT OF COMMERCIAL TAXES, EDAPPALLY, COCHIN  
682024

**OTHER PRESENT:**

SRI.A. MUHAMED RAFIQ-SPL.GP (TAXES) FOR RESPONDENTS  
SRI.KURYAN THOMAS FOR THE PETITIONER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 31.7.2023, ALONG WITH WP(C) Nos.22343/2015, 31902/2015,  
31955/2015 & 32003/2015, THE COURT ON 09.01.2024 DELIVERED  
THE FOLLOWING:



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 9<sup>TH</sup> DAY OF JANUARY 2024 / 19<sup>TH</sup> POUSHA, 1945

WP(C) NO. 22343 OF 2015

PETITIONER/S:

M/S.EURO BUSINESS SYSTEM,  
5TH FLOOR, BLOCK NO.1, NEW BUS STAND, THAVAKKARA,  
KANNUR-670 001, REPRESENTED BY ITS MANAGING  
PARTNER, MR.PRAKASH T.

BY ADVS.  
SRI.M.GOPIKRISHNAN NAMBIAR  
SRI.P.BENNY THOMAS  
SRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURRYAN THOMAS

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, TAXES  
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM-695  
001.
- 2 THE COMMERCIAL TAX OFFICER  
3RD CIRCLE, KANNUR-670 012
- 3 THE INTELLIGENCE OFFICER (IB)  
COMMERCIAL TAXES, MATTANCHERRY AT MINI CIVIL  
STATION, ALUVA-683 101.

BY SRI.A. MUHAMED RAFIQ-SPL.GP (TAXES) FOR  
RESPONDENTS  
SRI.KURRYAN THOMAS FOR THE PETITIONER



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**WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.**

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THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31.7.2023, ALONG WITH WP(C).23630/2016 AND CONNECTED CASES, THE COURT ON 09.01.2024 DELIVERED THE FOLLOWING:



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 9<sup>TH</sup> DAY OF JANUARY 2024 / 19<sup>TH</sup> POU SHA, 1945

WP(C) NO. 31902 OF 2015

**PETITIONER/S:**

M/S. KYOCERA DOCUMENT SOLUTIONS INDIA PVT. LTD.  
PRASANTA BHAVAN, 38/2340 MATHA NAGAR ROAD,  
ELAMKULAM, 38, KADAVANTHARA, ERNAKULAM - 682 017,  
REPRESENTED BY ITS AREA OPERATIONS MANAGER,  
MR.SHIJU G THARAYIL.

BY ADVS.

SRI.M.GOPIKRISHNAN NAMBIAR  
SRI.P.BENNY THOMAS  
SRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURYAN THOMAS  
SRI.RAJA KANNAN

**RESPONDENT/S:**

- 1 STATE OF KERALA, REPRESENTED BY ITS SECRETARY  
TO GOVERNMENT, TAXES DEPARTMENT, SECRETARIAT,  
THIRUVANANTHAPURAM 695001.
- 2 THE COMMERCIAL TAX OFFICER  
3RD CIRCLE, COMMERCIAL TAXES, ERNAKULAM -682 018.
- 3 THE INTELLIGENCE OFFICER-III  
(RAPID ACTION), OFFICE OF THE DEPUTY COMMISSIONER  
(INT.), COMMERCIAL TAXES DEPARTMENT, EDAPPALLY,  
ERNAKULAM-682024.

BY SRI.A. MUHAMED RAFIQ-SPL.GP (TAXES) FOR



2024/KER/1287

**WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.**

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RESPONDENTS  
SRI.RAJAKANNAN FOR THE PETITIONER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 31.7.2023, ALONG WITH WP(C).23630/2016 AND CONNECTED  
CASES, THE COURT ON 09.01.2024 DELIVERED THE FOLLOWING:



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 9<sup>TH</sup> DAY OF JANUARY 2024 / 19<sup>TH</sup> POU SHA, 1945

WP(C) NO. 31955 OF 2015

PETITIONER/S:

M/S.KYOCERA DOCUMENT SOLUTIONS INDIA PVT. LTD.  
PRASANTA BHAVAN, 38/2340, MATHA NAGAR ROAD,  
ELAMKULAM, 38, KADAVANTHRA, ERNAKULAM - 682 017,  
REPRESENTED BY ITS AREA OPERATIONS MANGER,  
MR.SHIJU G THARAYIL.

BY ADVS.  
SRI.M.GOPIKRISHNAN NAMBIAR  
SRI.P.BENNY THOMAS  
SRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURYAN THOMAS  
SRI.RAJA KANNAN

RESPONDENT/S:

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY, TAXES DEPARTMENT,  
SECRETARIAT, THIRUVANANTHAPURAM-695 001.
- 2 THE COMMERCIAL TAX OFFICER  
3RD CIRCLE, COMMERCIAL TAXES, ERNAKULAM-682 018.
- 3 THE INTELLIGENCE OFFICER-III  
(RAPID ACTION), OFFICE OF THE DEPUTY  
COMMISSIONER(INT). COMMERCIAL TAXES DEPARTMENT,  
EDAPPALLY, ERNAKULAM, PIN - 682 024.

BY SRI.A. MUHAMED RAFIQ-SPL.GP (TAXES) FOR



2024/KER/1287

**WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.**

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RESPONDENTS  
SRI.RAJAKANNAN FOR THE PETITIONER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 31.7.2023, ALONG WITH WP(C).23630/2016 AND CONNECTED  
CASES, THE COURT ON 09.01.2024 DELIVERED THE FOLLOWING:



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

TUESDAY, THE 9<sup>TH</sup> DAY OF JANUARY 2024 / 19<sup>TH</sup> POU SHA, 1945

WP(C) NO. 32003 OF 2015

**PETITIONER/S:**

M/S. KYOCERA DOCUMENT SOLUTIONS INDIA PVT. LTD.  
PRASANTA BHAVAN, 38/2340, MATHA NAGAR ROAD,  
ELAMKULAM, 38, KADAVANTHARA, ERNAKULAM 682 017,  
REPRESENTED BY ITS AREA OPERATIONS MANAGER, MR.  
SHIJU G. THARAYIL

BY ADVS.  
SRI.M.GOPIKRISHNAN NAMBIAR  
SRI.P.BENNY THOMAS  
SRI.K.JOHN MATHAI  
SRI.JOSON MANAVALAN  
SRI.KURYAN THOMAS  
SRI.RAJA KANNAN

**RESPONDENT/S:**

- 1 STATE OF KERALA  
REPRESENTED BY ITS SECRETARY TO GOVERNMENT, TAXES  
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM 695  
001.
- 2 THE COMMERCIAL TAX OFFICER  
3RD CIRCLE, COMMERCIAL TAXES, ERNAKULAM 682 018.
- 3 THE INTELLIGENCE OFFICER-III  
(RAPID ACTION), OFFICE OF THE DEPUTY COMMISSIONER  
(INT), COMMERCIAL TAXES DEPARTMENT, EDAPPALLY,  
ERNAKULAM 682 024





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**WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.**

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BY SRI.A. MUHAMED RAFIQ-SPL.GP (TAXES) FOR  
RESPONDENTS  
SRI.RAJAKANNAN FOR THE PETITIONER

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD  
ON 31.7.2023, ALONG WITH WP(C).23630/2016 AND CONNECTED  
CASES, THE COURT ON 09.01.2024 DELIVERED THE FOLLOWING:



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

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“C.R.”

J U D G M E N T

[WP(C) Nos.22343/2015, 31902/2015, 31955/2015,  
32003/2015 & 23630/2016]

WP(C) Nos.22343/2015 & 23630/2016

WP(C) No.22343/2015 has been filed mainly seeking the following reliefs:

“i) call for the records leading to Exhibits P11, P12 & P13 orders issued by the 3rd respondent and quash the same by the issuance of a writ of certiorari or such other writ, order or direction;

ii) declare that the "Multi-Function Printer" traded by the petitioner, falls under Entry 69(22)(c)(i) of the 3rd Schedule to the KVAT Act, 2003, attracting tax @ 4%;

iii) declare that the Amendment vide Kerala Finance Act, 2014, brought u/s. 55, taking away the two stages of appellate remedies and the right of revision on a substantial question of law before this Hon'ble Court, as unconstitutional, insofar as it deprives the assesseees of the already accrued statutory rights in respect of the proceedings initiated prior to 1.4.2014”



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The main reliefs sought for in WP(C) No.23630/2016 are as follows:

“i) call for the records leading to Exhibits P7, P8 & P9 orders issued by the 3rd respondent and quash the same by the issuance of a writ of certiorari or such other writ, order or direction;

ii) declare that the "Multi-Function Printer" traded by the petitioner, falls under Entry 69(22)(c)(i) of the 3rd Schedule to the KVAT Act, 2003, attracting tax @ 4%/5% as applicable in the respective year.”

2. The petitioners are Companies engaged in the business of sales of IT products. These writ petitions pertain to the assessment years 2011-12, 2012-13 and 2013-14. The petitioner in WP(C) No.22343/2015 had purchased two models of machines, 'TaskAlfa 180' and 'TaskAlfa 220' (hereinafter referred to as “machines” for short) from the importer-seller – M/s.Kyocera Mita India Pvt. Ltd., Ernakulam, presently Kyocera Documents Solutions India Pvt.Ltd., Ernakulam, which is the petitioner in WP(C) Nos.31955, 32003 & 31902 of



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2015. In the case of the petitioner in WP(C) No.23630/2016, the machine, 'TaskAlfa 180', was purchased from the very same importer-seller during the said period. These machines were classified under Entry 69 of the Third Schedule to the Kerala Value Added Tax Act, 2003 ("KVAT Act", for short).

3. The importer-seller classified the machines as 'Digital Multifunctional Device' with HSN Code 8443 3100 under the provisions of the Customs Act, 1962 and Customs Tariff Act, 1975. The petitioners/purchasers - re-sellers followed the same classification adopted by the importer-seller while re-selling the machines to their customers. The petitioners classified the machines under Entry 69(22)(c)(i) falling under the Third Schedule to the KVAT Act. The products under Entry 69(22)(c)(i) attract 5% VAT. The Intelligence Officer instituted penalty proceedings under Section 67 of the KVAT Act for the years 2011-12, 2012-13 and 2013-14, on the premise that there was wilful misclassification of



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the machines sold by the petitioners. The Intelligence Officer was of the view that the machines sold by the petitioners would come under serial No.30 in the 'list of goods taxable at 12.5%/13.5%/14.5%', as opposed to the classification of the petitioners under Entry 69(22)(c)(i) falling under the Third Schedule to the KVAT Act. The Intelligence Officer passed Exts.P7 to P9 penalty orders for three years separately affirming imposition of penalty proposed in the show cause notices issued to the petitioners in these two cases. These penalty orders are under challenge in WP(C) No.23630/2016.

4. However, the petitioner in WP(C) No.22343/2015 had challenged the aforesaid penalty orders issued against it before this Court by filing WP(C) No.33728/2014(M), which was disposed of by a learned Single Judge of this Court vide Ext.P10 judgment dated 19.12.2014, by which the penalty orders in Exts.P7 to P9 issued against the petitioner in WP(C) No.22343/2015 were set aside and the matter was remanded back to the



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Intelligence Officer for re-consideration, in the light of the observations of this Court in **Chakkiath Brothers v. Assistant Commissioner, Commercial Taxes [2014 (3) KHC 55]**, after giving an opportunity of hearing to the petitioner.

5. The Intelligence Officer in compliance of the directions issued by this Court in Ext.P10 judgment heard the petitioner in WP(C) No.22343/2015 and issued Exts.P11 to P13 orders of penalty, which are under challenge before this Court in WP(C) No.22343/2015. The Intelligence Officer also distinguished the decision of this Court in **Chakkiath Brothers (supra)**. The Intelligence Officer was of the view that the petitioner/dealer in the case had wilfully misclassified the commodity and therefore is liable to be proceeded with for imposition of penalty.

6. This Court would have relegated the petitioners to the alternate remedy of appeal under the provisions of the KVAT Act. However, considering the fact that, earlier, this Court had



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entertained WP(C) No.33728/2014(M) filed by the petitioner in WP(C) No.22343/2015 and remanded the matter back to the intelligence officer for reconsideration, and that these writ petitions have been admitted long back and pleadings are complete and, therefore, at this stage, relegating the petitioners to the alternate statutory remedy of appeal would not be justified in the facts and circumstances of these cases. Therefore, this Court would like to decide the merits of these cases, instead of relegating the petitioners to avail the alternate remedy of statutory appeal.

7. Sri.Rajakannan, learned counsel for the petitioners, submits that there is a mandatory requirement of 'satisfaction' of the assessing authority, *inter alia*, regarding the assessee submitting untrue or incorrect return and this is an essential ingredient to attract the penalty proceedings under Section 67(1) of the KVAT Act. In these cases, the said mandatory element of 'satisfaction' is missing as the petitioners had adopted the same classification under which the



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importer-seller, M/s.Kyocera Mita India Pvt. Ltd., imported the machines.

8. It is also submitted that the KVAT Act had adopted the same commodity classification and HSN Code, which are in the Customs Tariff Act. It cannot be said that the petitioners had wilfully misclassified the machines and there was an element of *mens rea* to evade tax or higher rate of tax. He further submitted that no penalty proceedings could be initiated when there was dispute of classification of the goods. The petitioners *bona fide* classified the machines under Entry 69(22)(c)(i) of the Third Schedule to the KVAT Act corresponding to HSN Code 8443 3100. Such conduct of the petitioners classifying the machines under Entry 69(22)(c)(i) of the Third Schedule to the KVAT Act cannot be said to be a contumacious conduct or wilful intend to attract the penalty proceedings under Section 67 of the KVAT Act.

9. There cannot be two different classifications, i.e. (i) at the end of the seller





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and (ii) at the end of the purchaser. Since the importer-seller - M/s.Kyocera Mita India Pvt. Ltd. - had classified the machines under Entry 69(22) (c)(i) of the Third Schedule to the KVAT Act, the petitioners being the purchasers - re-sellers, could not have adopted a different classification. The importer-seller had classified the machines under HSN Code 8443 3100, which falls under Chapter 84 of the Customs Tariff Act, which corresponds to Entry 69(22)(c)(i) of the Third Schedule to the KVAT Act. The petitioners being the re-sellers of the machines purchased from the importer-seller could not have adopted a different classification, and this is a settled position of law in a catena of decisions rendered by the Hon'ble Supreme Court in several cases.

10. Sri.Mohammed Rafiq, learned Special Government Pleader (Taxes), submitted that the machines did not have more than one functions, viz. 'printing' and 'copying'. The goods/products are covered under Entry 30 of the list of goods taxable @ 13.5% as published in SRO 88/2006. It



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is submitted that Entry 69(22)(c)(i) of the Third Schedule to the KVAT Act would be applicable to machines answering twin parameters, viz., (1) machine shall perform two or more functions viz. (i) printing or (ii) copying or (iii) facsimile transmission and (2) capable of being connected to an automatic data processing machine or to a network. The product in question is 'photocopier' and it can be used as a printer by adding optional equipments as provided in the 'Operation Guide' of the said machines. The optional equipments, which can be added to the machines as given in the operation guide, are :

1. Document processor
2. Paper feeder
3. Duplex Unit
4. Key counter
5. Printer kit/Printer server
6. Additional memory

11. The machines in question were copier and not printer. Therefore, they would not fall under Entry 69(22)(c)(i) of the Third Schedule to the KVAT Act. unless and until the electronic



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hardware, namely 'printer kit' and 'printer server' are added to the machine sold by the petitioners, the machine could not be connected to an automatic data processing machine or to a network for printing. The twin conditions provided under Entry 69(22)(c)(i) of the Third Schedule to the KVAT Act were not satisfied and therefore, the machines would fall under Entry 30 of list of goods taxable at RNR rate of 13.5% as specified in SRO 82/2006.

12. If the petitioners were fully aware of the nature of the machines sold to their customers that it would perform only single function of copying, the petitioners made a false claim under Entry 69(22)(c)(i) of the Third Schedule to the KVAT Act to evade payment of higher rate of tax and, therefore, they intentionally classified the machines in their returns under the wrong head to evade higher rate of tax and such returns would be said as untrue and incorrect, and therefore, the penalty proceedings under Section 67(1) of the KVAT Act were initiated and completed against the



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petitioners, which do not require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

13. Sri.Rafiq further submitted that no dispute regarding classification of the machines was pending before any of the authorities when the penalty proceedings were initiated against the petitioners. The petitioners had claimed concessional rate of tax available to multifunction machines, whereas they sold/supplied the machines which could perform a single function of copying.

14. Misclassification of 'single function machine' as 'multi function device' was contrary to the manufacturing Company's own product specification in the brochure and the 'Operation Guide' supplied along with the products for claiming tax at concessional rate, and this itself would amount to contumacious intention of the petitioners to evade higher rate of tax. Further, there is no requirement of *mens rea* for initiation of proceedings under Section 67(1) of the KVAT



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Act. Section 67(1) envisages civil liabilities for violation of obligations cast under the KVAT Act for filing true and correct returns. If an assessee files untrue and incorrect return, the penalty proceedings would get attracted. In support of this submission, the learned special Government Pleader has placed reliance on a Division Bench judgment of this Court in **Little Flower Hospital Trust v. State of Kerala [2019 (3) KLT 242]** which was rendered in respect of Section 17A of the Kerala Tax on Luxuries Act, 1976. The provisions of Section 67(1) of the KVAT Act are in *pari materia* to the provisions of Section 17A of the Kerala Tax on Luxuries Act.

15. I have considered the submissions.

16. It is not in dispute that the Customs authorities had accepted classification of the machines under HSN Code 8443 3100 under the head 'Digital Multifunctional Device' under the provisions of the Customs Act and the Customs Tariff Act, which is corresponding to Entry 69(22) (c)(i) of the Third Schedule to the KVAT Act. The



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importer-seller itself had classified the said products under Entry 69(22)(c)(i) of the Third Schedule to the KVAT Act with HSN Code 8443 3100 under the Customs Act and the Customs Tariff Act. When the importer-seller had classified its machine under HSN Code 8443 3100, which falls under Chapter 84 of the Customs Tariff Act corresponding to Entry 69(22)(c)(i) of the Third Schedule to the KVAT Act, the petitioners herein being re-sellers of the machines purchased from the importer-seller could not adopt a different classification. The Hon'ble Supreme Court in paragraph Nos.3 to 6 of the decision in **Sarvesh Refractories (P) Limited v. Commissioner of Central Excise and Customs [(2007) 13 SCC 601]** observed and held as follows:

“3. Since the said item had been classified by M/s. Escorts JCB Ltd., the manufacturer and supplier, under Heading 84.29 and had paid duty under the said heading, the authority-in-original, viz., Dy. Commissioner disallowed the MODVAT credit to the appellant by observing that the said Heading 84.29 has been



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specifically ousted from the definition of "capital goods" under Rule 57-Q of the Rules. The Dy. Commissioner also imposed a penalty of Rs.50,000/- under Rule 173-Q(bb) of the Rules.

4. On appeal filed by the appellant, the Commissioner (Appeals) observed that "Loadall" being an improvised version of material handling equipment would properly fall under Heading 84.27 and not under Heading 84.29. It was further observed that fork-lift truck or crane or similar material handling equipments have been held to be eligible capital goods. On this finding, the Commissioner (Appeals) held that the appellant would be entitled to claim MODVAT credit.

5. Revenue, being aggrieved, filed an appeal before the Tribunal which was accepted by setting aside the order of the Commissioner (Appeals) and restoring that of the authority-in-original. It was held that the "Loadall" having been classified by the Central Excise Officer having jurisdiction over the manufacturer's factory as falling under Heading 84.29, the appellant, who is the consumer of those goods, could not get the classification of the manufacturer changed



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from Heading 84.29 to 84.27.

6. The finding recorded by the Tribunal is unexceptionable. We agree with the view taken by the Tribunal that the appellant could not get the classification of "Loadall" changed to Heading 84.27 from 84.29, as declared by the manufacturer. Insofar as the penalty imposed by the authority-in-original is concerned, we are of the view that a case for imposition of penalty is not made out and accordingly the same is set aside and deleted. Rest of the order of the Tribunal restoring the order of the authority-in-original is confirmed."

17. Section 67 of the KVAT Act reads as under:

**"67. Imposition of penalty by authorities.-**  
(1) Notwithstanding anything contained in section 71 if any authority empowered under this Act is satisfied that any person, -  
(a) being a person required to register himself as a dealer under this Act, did not get himself registered; or  
(b) has failed to keep true and complete accounts; or





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(c) has failed to submit any return as required by the provisions of this Act or the rules made thereunder; or

(d) has submitted an untrue or incorrect return; or

(e) has made any bogus claim of input tax credit, special rebate or refund; or

(f) has continued the business during the period of suspension of registration; or

(g) has failed to return the unused statutory Forms and Declarations under this Act after the cancellation or suspension of the registration; or

(h) has not stopped any vehicle or vessel when required to do so; or

(i) has failed to comply with all or any of the terms of any notice or summons issued to him by or under the provisions of this Act or the rules made there under; or

(j) has acted in contravention of any of the provisions of this Act or any rule made thereunder, for the contravention of which no express provision for payment of penalty or for punishment is made by this Act; or

(k) has abetted the commission of the above offences, or

(l) has abetted or induced in any manner another person to make and deliver any return or an account or a statement or



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declaration under this Act or rules made there under, which is false and which he either knows to be false or does not believe to be true, such authority may direct that such person shall pay, by way of penalty, an amount not exceeding twice the amount of tax or other amount evaded or sought to be evaded where it is practicable to quantify the evasion or an amount not exceeding Ten thousand rupees in any other case:

Provided that the authority empowered under this Section shall dispose of the case within three years from the date of detection of offence mentioned under this Section except where the extension of time is granted by the Deputy Commissioner.

(2) Notwithstanding anything contained in sub-section (1), where on completion of an assessment in relation to a dealer under sections 22, 23, 24 or 25, it is found that the tax so determined on such assessment was not paid by the dealer, the assessing authority may direct such dealer to pay, in addition to the tax so determined, a penalty, in the case of a dealer who has made part payment, at twice the balance amount of tax so determined, and in the case of a dealer who has not paid any amount, twice the complete amount so assessed.



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**Explanation:** - The burden of proving that any person is not liable to the penalty under sub-section (1) shall be on such person.

(3) No order under sub-sections (1) or (2) shall be passed unless the person on whom the penalty is proposed to be imposed is given an opportunity of being heard in the matter.”

18. Section 67 of the KVAT Act empowers imposition of penalty by authorities under the Act, if the competent authority is '**satisfied**', *inter alia*, that an assessee/person had submitted an untrue or incorrect return with an intention to evade tax. Therefore, the following two conditions are required to be '**satisfied**' for initiation of penalty proceedings under Section 67(1) of the KVAT Act:

(i) The authority must be satisfied that the assessee/person had filed untrue or incorrect return, and

(ii) There must be intention of evasion of payment of correct tax.



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

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19. In the present cases, when the importer-seller had classified the said machines as 'Digital Multifunctional Devices' with HSN Code 8443 3100 under the provisions of the Customs Act, 1962 and the Customs Tariff Act, 1975 at the time of import and the said HSN Code is identical to Entry 69(22)(c)(i) of the Third Schedule to the KVAT Act, the petitioners cannot be said to have wilfully classified the machines under a wrong head with the intention to evade payment of correct/higher rate of tax at 13.5%. The penalty proceedings has to be initiated when there is wilful or contumacious act on the part of the assessee to evade payment of correct tax. The petitioners had reason to adopt the said classification as 'Digital Multifunctional Devices', as they being re-sellers could not have classified the machines to a different classification.

20. In view of the aforesaid, I am of the opinion that the initiation of penalty proceedings against the petitioners in WP(C) Nos.22343/2015 &



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

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23630/2016 are not justified and therefore, the penalty orders (Exts.P11 to P13 and Exts.P7 to P9 in WP(C) Nos.22343/2015 & 23630/2016, respectively) impugned in these cases are hereby set aside.

21. In the result, WP(C) Nos.22343/2015 & 23630/2016 are hereby allowed, without any order as to costs.

WP(C) Nos.31955, 32003 & 31902 of 2015

22. The very same petitioner in these cases is a Company engaged in the business of sale of IT products. These writ petitions pertain to the assessment years 2011-12, 2012-13 and 2013-14 and were filed mainly seeking the reliefs as sought for in WP(C) Nos.22343/2015 & 23630/2016.

23. The petitioner herein is the importer-seller of the machines, which were purchased by the petitioners in WP(C) Nos.22343/2015 & 23630/2016. Penalty orders at Exts.P5 were also issued to the petitioner/importer-seller by Department.



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

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24. This Court has allowed WP(C) Nos.22343/2015 & 23630/2016 filed by the purchasers - re-sellers of the machines in this judgment as above by setting aside the penalty orders impugned therein. Hence, following the same, the penalty orders issued against the petitioner-importer/seller are also liable to be set aside.

25. In view of the above, WP(C) Nos.31955, 32003 & 31902 of 2015 are also allowed and the penalty orders, Exts.P5, issued against the petitioner-importer/seller under Section 67(1) of the KVAT Act are also hereby set aside.

These writ petitions are also hereby allowed without any order as to costs.

Pending interlocutory application, if any, in these five writ petitions stands dismissed.

Sd/-  
DINESH KUMAR SINGH  
JUDGE

jg



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

**APPENDIX OF WP(C) 22343/2015**

PETITIONER ANNEXURES

- EXHIBIT P1. TRUE COPY OF THE PENALTY NOTICE DATED 19/7/2014, ISSUED BY THE 3RD RESPONDENT U/S.67(1) OF THE ACT, PERTAINING TO THE ASSESSMENT YEAR 2011-12.
- EXHIBIT P2. TRUE COPY OF THE PENALTY NOTICE DATED 19/7/2014, ISSUED BY THE 3RD RESPONDENT U/S.67(1) OF THE ACT, PERTAINING TO THE ASSESSMENT YEAR 2012-13
- EXHIBIT P3. TRUE COPY OF THE PENALTY NOTICE DATED 19/7/2014, ISSUED BY THE 3RD RESPONDENT U/S.67(1) OF THE ACT, PERTAINING TO THE ASSESSMENT YEAR 2013-14
- EXHIBIT P4. TRUE COPY OF THE REPLY FILED BY THE PETITIONER DATED 23/8/2014 AGAINST EXT.P1 NOTICE.
- EXHIBIT P5 TRUE COPY OF THE REPLY (WITHOUT ANNEXURES) FILED BY THE PETITIONER DATED 23/8/2014 AGAINST EXT.P2 NOTICE.
- EXHIBIT P6 TRUE COPY OF THE REPLY (WITHOUT ANNEXURES) FILED BY THE PETITIONER DATED 23/8/2014 AGAINST EXT.P3 NOTICE.
- EXHIBIT P7 TRUE COPY OF THE PENALTY ORDER DATED 30/10/2014 (RECEIVED ON 13/11/2014) PASSED BY THE 3RD RESPONDENT U/S.67 OF THE ACT, PERTAINING TO THE ASSESSMENT YEAR 2011-12.
- EXHIBIT P8 TRUE COPY OF THE PENALTY ORDER DATED 30/10/2014 (RECEIVED ON 13/11/2014) PASSED BY THE 3RD RESPONDENT U/S.67 OF THE ACT, PERTAINING TO THE ASSESSMENT YEAR 2012-13



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

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- EXHIBIT P9 TRUE COPY OF THE PENALTY ORDER DATED 30/10/2014 (RECEIVED ON 13/11/2014) PASSED BY THE 3RD RESPONDENT U/S.67 OF THE ACT, PERTAINING TO THE ASSESSMENT YEAR 2013-14.
- EXHIBIT P10 TRUE COPY OF THE JUDGMENT DATED 19/12/2014 IN WPC NO.33728/2014 ISSUED TO THE PETITIONER BY THE HONOURABLE HIGH COURT OF KERALA.
- EXHIBIT P11 TRUE COPY OF THE ORDER OF THE PENALTY FOR THE YEAR 2011-12 DATED 8/5/2015 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT U/S.67 (1) OF THE KVAT ACT.
- EXHIBIT P12 TRUE COPY OF THE ORDER OF THE PENALTY FOR THE YEAR 2012-13 DATED 8/5/2015 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT U/S.67 (1) OF THE KVAT ACT.
- EXHIBIT P13 TRUE COPY OF THE ORDER OF THE PENALTY FOR THE YEAR 2013-14 DATED 8/5/2015 ISSUED TO THE PETITIONER BY THE 3RD RESPONDENT U/S.67 (1) OF THE KVAT ACT.
- ANNEXURE-1 COPY OF THE DECISION IN SARVESH REFRACTORIES CASE, REPORTED IN (2007) 13 SCC 601.
- ANNEXURE-2 COPY OF DECISION IN CCE AND CUSTOMS VS. MDS SWITCHGEAR LTD., REPORTED IN (2008) 17 SCC 71





WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

**APPENDIX OF WP(C) 31902/2015**

PETITIONER ANNEXURES

EXT.P1: TRUE COPY OF THE PENALTY NOTICE DATED 30.04.2014, ISSUED BY THE 3RD RESPONDENT U/S.67(1) OF THE ACT, PERTAINING TO THE YEAR 2013-14.

EXT.P2: TRUE COPY OF THE REPLY (WITH ANNEXURES) DATED 19.05.2014, FILED BY THE PETITIONER, AGAINST EXT.P1 NOTICE.

EXT.P3: TRUE COPY OF THE REVISED NOTICE DATED 26.03.2015 ISSUED BY THE 3RD RESPONDENT.

EXT.P4: TRUE COPY OF THE REPLY DATED 15.06.2015 SUBMITTED BY THE PETITIONER AT THE TIME OF PERSONAL HEARING BY THE 3RD RESPONDENT.

EXT.P5: TRUE COPY OF THE ORDER DATE 15.07.2015 ISSUED BY THE 3RD RESPONDENT U/S.67(1) OF THE KVAT ACT, FOR THE YEAR 2013-14.



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

**APPENDIX OF WP(C) 31955/2015**

PETITIONER ANNEXURES

- EXT.P1: TRUE COPY OF THE PENALTY NOTICE DATED 30.04.2014, ISSUED BY THE 3RD RESPONDENT U/S.67(1) OF THE ACT, PERTAINING TO THE YEAR 2011-12.
- EXT.P2: TRUE COPY OF THE REPLY (WITH ANNEXURES) DATED 19.05.2014, FILED BY THE PETITIONER, AGAINST EXT.P1 NOTICE.
- EXT.P3: TRUE COPY OF THE REVISED NOTICE DATED 26.03.2015 ISSUED BY THE 3RD RESPONDENT.
- EXT.P4: TRUE COPY OF THE REPLY DATED 15.06.2015 SUBMITTED BY THE PETITIONER AT THE TIME OF PERSONAL HEARING BY THE 3RD RESPONDENT.
- EXT.P5: TRUE COPY OF THE ORDER DATE 15.07.2015 ISSUED BY THE 3RD RESPONDENT U/S.67(1) OF THE KVAT ACT, FOR THE YEAR 2011-12.
- ANNEXURE-1 COMMISSIONER OF CUS AND C. EX., GOA VS. PHIL CORPORATION LTD., REPORTED IN 2008 (223) E.L.T. 9 (S.C)
- ANNEXURE-2 THE COPY OF THE RELEVANT EXTRACT OF THE 'RULES OF INTERPRETATION OF SCHEDULES' APPENDED TO THE KVAT ACT
- ANNEXURE-3 THE COPY OF THE RELEVANT EXTRACT OF ENTRY NO. 30 UNDER SRO 82/2006 DATED 21.01.2006
- ANNEXURE-4 MAURI YEAST INDIA PVT. LTD. VS. STATE OF U.P., REPORTED IN 2008 (225) E.L.T. 321 (S.C)
- ANNEXURE-5 THE COPY OF THE RELEVANT EXTRACT OF CHAPTER 84, CHAPTER 90 OF THE CTA AND THE RELEVANT



**WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.**

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EXTRACT OF FINANCE ACT, 2006,

- ANNEXURE-6 HDFC BANK LIMITED VS. ASSISTANT COMMISSIONER (ASSMT.), SPECIAL CIRCLE I, ERNAKULAM AND ANOTHER, REPORTED IN [(2010) 36 VST 338 (KER)
- ANNEXURE-7 CHAKKIATH BROTHERS' CASE, REPORTED IN 2014 (3) KHC 55
- ANNEXURE-8 STATE OF KERALA VS. JOEMON RAJAN - REPORTED IN 2018 (4) KHC 513 (DB)
- ANNEXURE-9 COMMISSIONER OF SALES TAX, U. P. VS. SANJIV FABRICS AND ANR. (2011) 19 KTR 1 (SC)
- ANNEXURE-10 STATE OF KERALA VS. HOTEL DIANA (JUDGMENT DATED 06.06.2023 IN W.A NO. 2351/2016.
- ANNEXURE-11 P.D. SUDHI VS. INTELLIGENCE OFFICER, AIT AND ST, MATTANCHERRY AND OTHERS, REPORTED IN (1992) 85 STC 337.
- ANNEXURE-12 HPL CHEMICALS LTD. VS. CCE, CHANDIGARH, REPORTED IN (2006) 5 SCC 208
- ANNEXURE-13 KATHIRESAN YARN STORES, SALEM VS. STATE OF TAMIL NADU, REPORTED IN AIR 1978 MAD 322 : 1978 42 STC 121
- ANNEXURE-14 KEVI HARDWARE VS. STATE OF KERALA, REPORTED IN 2003 (2) KLT 776 (F.B.)
- ANNEXURE-15 XEROX INDIA LIMITED VS. COMMISSIONER OF CUSTOMS, MUMBAI, REPORTED IN (2010) 14 SCC 430
- ANNEXURE-16 COMMISSIONER OF CUSTOMS, MUMBAI VS. TOYO ENGINEERING INDIA LTD., REPORTED IN (2006) 7 SCC 592.
- ANNEXURE-17 MOHINDER SINGH GILL AND ANOTHER VS. THE CHIEF ELECTION COMMISSIONER, NEW DELHI AND OTHERS,



**WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.**

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REPORTED IN (1978) 1 SCC 405.

ANNEXURE-18 COPY OF THE JUDGMENT DATED 11.09.2015 IN W.P.  
(C) NO. 27101/2015 .

ANNEXURE-19 BERGER PAINTS INDIA LTD., VS. CIT, REPORTED IN  
(2004) 12 SCC 42.

ANNEXURE-20 RAZA TEXTILES LTD., VS. ITO, REPORTED IN  
(1973) 1 SCC 633

ANNEXURE-21 ABL INTERNATIONAL LTD. AND ANOTHER VS. EXPORT  
CREDIT GUARANTEE CORPORATION OF INDIA LTD, AND  
OTHERS, REPORTED IN (2004) 3 SCC 553

ANNEXURE-22 PRANAY SETHI'S CASE, REPORTED IN (2017) 16 SCC  
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ANNEXURE-23 PRATIBHA PROCESSORS VS. UNION OF INDIA,  
REPORTED IN (1996) 11 SCC 101



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

**APPENDIX OF WP(C) 32003/2015**

PETITIONER EXHIBITS

EXHIBIT P1. TRUE COPY OF THE PENALTY NOTICE DATED 30-04-2014, ISSUED BY THE 3RD RESPONDENT U/S 67(1) OF THE ACT, PERTAINING TO THE YEAR 2012-13

EXHIBIT P2 THE TRUE COPY OF THE REPLY (WITH ANNEXURES) DATED 19-05-2014, FILED BY THE PETITIONER, AGAINST EXHIBIT P1, NOTICE

EXHIBIT P3 TRUE COPY OF THE REVISED NOTICE DATED 26-03-2015 ISSUED BY THE 3RD RESPONDENT

EXHIBIT P4 THE TRUE COPY OF THE REPLY DATED 15-06-2015 SUBMITTED BY THE PETITIONER AT THE TIME OF PERSONAL HEARING BY THE 3RD RESPONDENT

EXHIBIT P5 THE TRUE COPY OF THE ORDER DATED 15-07-2015 ISSUED BY THE 3RD RESPONDENT U/S. 67(1) OF THE KVAT ACT, FOR THE YEAR 2012-13



WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.

**APPENDIX OF WP(C) 23630/2016**

PETITIONER ANNEXURES

- EXHIBIT P1 THE TRUE COPY OF PENALTY NOTICE DATED  
05.05.2016 ISSUED BY THE 3RD RESPONDENT U/S.  
67(1) OF THE ACT, PERTAINING TO THE ASSESSMENT  
YEAR 2011-12
- EXHIBIT P2 THE TRUE COPY OF THE PENALTY NOTICE DATED  
05.05.2016 ISSUED BY THE 3RD RESPONDENT U/S.  
67(1) OF THE ACT, PERTAINING TO THE ASSESSMENT  
YEAR 2012-13
- EXHIBIT P3 THE TRUE COPY OF THE PENALTY NOTICE DATED  
05.05.2016 ISSUED BY THE 3RD RESPONDENT U/S.  
67(1) OF THE ACT, PERTAINING TO THE ASSESSMENT  
YEAR 2013-14
- EXHIBIT P4 THE TRUE COPY OF THE REPLY DATED 27.05.2016  
(WITH ANNEXURES) FILED BY THE PETITIONER  
AGAINST EXT P1 NOTICE
- EXHIBIT P5 THE TRUE COPY OF THE REPLY (WITH ANNEXURES)  
DATED 27.05.2016 FILED BY THE PETITIONER  
AGAINST EXT P2 NOTICE
- EXHIBIT P6 THE TRUE COPY OF THE REPLY (WITH ANNEXURES)  
DATED 27.05.2016 FILED BY THE PETITIONER  
AGAINST EXT P3 NOTICE
- EXHIBIT P7 TRUE COPY OF THE PENALTY ORDER DATED 30.05.2016  
(RECEIVED ON 18.06.2016) PASSED BY THE 3RD  
RESPONDENT U/S. 67 OF THE ACT PERTAINING TO THE  
ASSESSMENT YEAR 2011-12
- EXHIBIT P8 TRUE COPY OF THE PENALTY ORDER DATED 30.05.2016  
(RECEIVED ON 18.06.2016) PASSED BY THE 3RD  
RESPONDENT U/S. 67 OF THE ACT PERTAINING TO THE  
ASSESSMENT YEAR 2012-13



**WP(C) Nos.22343, 31902, 31955, 32003/15 & 23630/2016.**

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EXHIBIT P9 TRUE COPY OF THE PENALTY ORDER DATED 30.05.2016  
(RECEIVED ON 18.06.2016) PASSED BY THE 3RD  
RESPONDENT U/S. 67 OF THE ACT PERTAINING TO THE  
ASSESSMENT YEAR 2013-14

ANNEXURE-1 A COPY OF DECISION IN SARVESH REFRACTORIES (P)  
LTD. V. CCE AND CUSTOMS,- REPORTED IN (2007) 13  
SCC 601

ANNEXURE-2 A COPY OF DECISION IN CCE AND CUSTOMS VS. MDS  
SWITCHGEAR LTD., (2008) 17 SCC 71