

PROCEEDINGS OF THE COMMISSIONER OF COMMERCIAL TAXES, KERALA
THIRUVANANTHAPURAM

PRESENT: P. MARA PANDIYAN I.A.S

Sub: KVAT Act, 2003- Clarification U/s 94 – Rate of tax of PALMTEC – Orders Issued –Reg.
Ref: Application from M/s Softland India Limited, Thiruvananthapuram dated 1/1/2009.

ORDER No.C3/1064/09/CT DATED 5/4/2010.

1. M/s Softland India Limited, Thiruvananthapuram has preferred an application U/s 94 of the Kerala Value Added Tax Act 2003, seeking clarification on the rate of tax of the device PALMTEC.

2. The applicant is a Public Limited Company engaged in the manufacture and marketing of Embedded Systems based IT solutions. The applicant manufactures hand-held devices and also develop Application Software for being installed in them. The applicant markets them under the brand name PALMTEC, a machine capable of storing and processing alpha-numeric data. The output can be printed and the data stored can be integrated to the accounting software deployed by the user. Depending on the software installed in PALMTEC, it can be used in a wide range of data processing activities like billing of utilities, preparation of purchase / sales invoices, recording payments to / collections from customers etc. As data can be imported into or exported from PALMTEC, users have the freedom to use different modules of the application software as offline and / or offshore functions.

3. The applicant contends that PALMTEC conforms to stipulations / description of Sub-heading 8471 of Central Excise / Customs Tariff Acts and returns are filed under Central Excise Law under the Heading 8471. This classification and returns are accepted by the Central Excise authorities.

4. The applicant had been collecting and remitting tax under the Kerala Value Added Tax Act, 2003, by classifying PALMTEC under Entry 69 of the Third Schedule to the Act.

5. But, the Intelligence Officer (I.B), Thiruvananthapuram, proposed to classify PALMTEC under Entry 73(5) of SRO No.82/2006 with HSN 8470.21.00. The Officer was of the opinion that PALMTEC is a ticket issuing machine and then proceeded to classify it as a “calculating machine incorporating a printing device”. Thus, a dispute arose and this application was filed.

6. The applicant contends that a “ticket issuing machine”, as understood in trade and industry, is a dedicated machine used for dispensing tickets in parking lots and printed tickets at Railway Stations. A ticket issuing machine is a dedicated device capable of performing only the intended purpose and is totally different from an automatic data processing machine. While a ticket issuing machine falls under HSN 8470, automatic data processing machine is classified under HSN 8471.

7. The applicant contends that the HSN 8470 refers to machines such as Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions and the like. On the other hand HSN 8471 refers to Automatic data processing machines and the like. The significant difference between them is that equipment / machine / device classified under HSN 8470 is incapable of processing data as in the case of a machine coming under HSN 8471.

8. The applicant contends that the product under HSN 8470.21.00 is an Electronic Calculator incorporating a printing device and is capable of performing only basic arithmetical operations (Numeric data). But, data processing machine is capable of processing alpha-numeric data and PALMTEC is a data processing machine and not a simple calculator.

9. The applicant has referred the judgment of the Hon'ble Supreme Court of India in Reckitt Benckiser (India) Ltd. Vs. Commissioner, Commercial Taxes [2008 15 VST 10 (SC)] to support his contention. The applicant has also referred the judgment of the Hon'ble High Court of Kerala in Kevi Hardware Vs. State of Kerala [(2003) 11 KTR 562 (Ker)] and contends that **user test** is not a safe guide as various items can be used for different purposes.

10. The applicant further contends that just because a user would use their hand held device PALMTEC as a calculator or for issuing journey tickets, it cannot be classified as a calculator with a printing device. PALMTEC used by KSRTC is not at all different from the machine used for accounting purposes like preparing sales and / or purchase invoices, cash collections and the like. The use of PALMTEC by KSRTC only establishes the versatility of the product. In the case of PALMTEC used by KSRTC, the applicant have developed and installed a software which processes a multitude of alpha-numeric data. PALMTEC used by KSRTC is totally different from the ticket issuing machines referred to in the HSN 8470.

11. The applicant has referred the judgment of the Hon'ble Supreme Court in Porrits & Spencer (Asia) Ltd. Vs State of Haryana [(1978) 42 STC 433 (SC)], and contends that the concept of Computer is also not static. The applicant has also referred the Clarification Order No. C7-24398/06/CT dated 29-06-2006 to support his case.

12. The applicant was heard and the contentions raised were examined as follows.

13. The applicant contends that PALMTEC conforms to HSN Code 8471. The Customs Tariff Act Entry related to HSN Code 8471 reads *Automatic data processing machine and units thereof; magnetic or optical readers, machine for transcribing data on to data media in coded form and machines for processing such data, not elsewhere specified or included.* This HSN Code appears in Entry 69(22)(a) of the Third Schedule to the Act.

14. Entry 69(22)(a) of the Third Schedule to the Act reads:

69 *IT Products*

22 *Computer systems and peripherals, Electronic diaries, Printers and Monitors*

(a) *Computer systems and peripherals*

8471

15. The Intelligence Officer (I.B), Thiruvananthapuram in his notice has stated that '*PALMTEC Hand held Micro Computer with in built Printer*' is used for issuing tickets in buses

spot billing etc. The user can input the distance or meter reading as the case may be and the device will calculate the amount and give a printout. This type of calculating machine is not covered under 3rd Schedule of the KVAT Act. It is specifically incorporated in SRO.No.82/2006 as Sl.No.73(5) as calculating machine incorporating a printing device and taxable @ 12.5%. The said entry reads Calculating machine incorporating a printing device with HSN Code 8470.21.00. Broad four digit HSN Code 8470 reads Calculating machines and pocket-size data recording, reproducing and displaying machines with calculating functions; accounting machines, postage-franking machines, ticket-issuing machines and similar machines, incorporating a calculating device; cash registers.

16. Note No.5(A) to Chapter 84 of the Customs Tariff Act states that for the purposes of heading 8471, the expression “*automatic data processing machines*” means:

(a) digital machines, capable of (1) storing the processing programme or programmes and at least the data immediately necessary for the execution of the programme; (2) being freely programmed in accordance with the requirements of the user; (3) performing arithmetical computations specified by the user; and (4) executing, without human intervention, a processing programme which requires them to modify their execution, by logical decision during the processing run;

17. As the product in question involves technical / software aspects, technical opinion was obtained from M/s KELTRON, (I.T. Business Group) and the matter was examined as follows:

18. M/S KELTRON has opined that from the observations listed in their letter No. ITBG-SW/TAXES/2602010/001 dated 26/2/2010, *it can be ascertained that the PALMTEC device, as demonstrated to KELTRON engineers, is a general-purpose microcomputer, which can be programmed and configured for different complex sub-sets of main application(s) and not that of just calculation in nature and have been designed for mobility and ease of use, when a workman / technician / scientist etc. has to carried out different types of processing at different locations / sites of varying environmental conditions. It should have very minimal weight and size, capable of being carried by human beings with no or minimal discomfort and with sufficient built-in battery backup, for each operation and a printing device, if required.*

It therefore by our judgment cannot be classified as a dedicated ‘Calculating Machine incorporating a printing device’. The very basis of a ‘Calculation Machine’ from a design point of view would have been specificity in operations typically mathematical in nature and therefore not designed to be generic in purpose and therefore cannot be loaded with different applications on the same designed hardware, as the design would not have taken these aspects into consideration and only the cost and speed of operations would have been the main consideration.

19. The opinion furnished by M/S KELTRON regarding the aspects and function of the machine can be relied upon. It is also clear that HSN 8470 comprises of machines with a lesser degree of functional latitude, performing comparatively a fixed programme of calculations and simple algorithms than that of the machines comprised in HSN 8471. In the case of PALMTEC, the software can be changed to suit the requirements of the user.

20. Hence relying on the functional aspects of the machine, Chapter Notes to Chapter 84 of the Customs Tariff Act and the fact that the Central Excise authorities has accepted the

classification of the applicant, it can safely be concluded that the device PALMTEC is an automatic data processing machine, includible under the HSN Code 8471 and consequently under Entry 69(22)(a) of the Third Schedule to the Kerala Value Added Tax Act, 2003 and hence is taxable at 4%.

The issues raised above are clarified accordingly.

COMMISSIONER