Read - 1) Applications dt.06.06.07 and dt.02.06.07 from M/s. Apsom Technologies (India) Pvt. Ltd. holder of TIN 2774002548V and M/s. Negi Sign Systems & Supplies Co. holder of TIN 27720000910V respectively.

a) Communication dt.14.1.2009 & 30.01.2009 from Shri C. B. Thakkar, Advocate in the case of both the dealers.

b) This office letters dt. 12.9.08, 24.9.08, 18.10.08, 6.11.08 and 10.11.08 calling the applicants for hearing.

Heard - Shri C. B. Thakkar, Advocate attended the hearing on dt.02.12.2008.

PROCEEDINGS

(u/s 56 (1) and (2) of the Maharashtra Value Added Tax Act, 2002)

No. DDQ 11/2007/Adm-3/17 & 18/B - 1 Mumbai, dt.02.09.2009

This is set of two applications involving a common question as regards the rate of tax in respect of the product "Larger Format Ink Jet Printer". Hence it is decided to pass a common order.

02. FACTS AND CONTENTION

Both the applicants are registered under the Maharashtra Value Added Tax Act, 2002 [MVAT Act,2002] and have their Head Offices at the below mentioned places :

Apsom Technologies (India) Pvt. Ltd.	333, Laxmi Plaza, Off New Link Road, Andheri (W), Mumbai- 400053.
Negi Sign Systems & Supplies Co.	301, Shivam Chambers, S.V. Road, Goregaon (West), Mumbai- 400062.

The applicants' have submitted as under :

1. The applicants are importers of ink jet printers.
2. The goods are cleared under the Central Excise Tariff Heading [CETH] 8443 3910. However, ink jet printer is also covered under CETH 8471.41/8471.60.
3. It is informed that the product cannot be used on its own. It has to be used with computer and it is thus forming part of complete digital data processing system. In this respect it satisfies the condition laid down in chapter 8471.
4. The clearance of printers under CETH 8443 is on the advise of clearing house agent out of abundant caution.
5. In the notification for Information Technology Products, there is self contained code for determining the CETH. As per Note (I) in the said notification, the classification under HSN is to be followed and as per the same, the printer falls in CETH 8471. The CETH 8471 is duly covered by the notification u/e. C-56 and therefore the rate of tax thereon is 4%.
6. The applicant informs that the Business Audit Officer has taken objection that the product is liable to tax @ 12.5% and not 4%. Therefore, the applicant has filed the determination application to know the correct tax rate.
7. M/s. Apsom Technologies has submitted a copy of the Bill of Entry for Home Consumption [B/E] dt.10.04.2007 which shows the product 'Larger Format Inkjet Printer JVP3-160 SP with Exhaust' covered under the CETH 84433910. In yet another

B/E dt.07.05.2007, the product 'Large Format Ink Jet Printer Megajet 3204P with ST' is shown as covered under the CETH 84433910. The applicant has submitted two copies of Sales Bills as follows :

i. Invoice no. ATPL/B/67 dt.09.05.07 evidencing sale of 1 Large Format Inkjet Printer Megajet -3204.

ii. Invoice no. ATPL/A/825 dt.29.03.07 evidencing sale of 1 Inkjet Printer JV3-160SP 63.9" Ink Jet Printing M/c.

iii. In both the bills, the goods are mentioned below the following words in bold form – **Computer Peripheral.**

iv. The applicant has collected tax @4% in both the bills.

v. The applicant was charging tax @ 4% from 01.04.2005. Hence, it is requested that if the rate of tax on the impugned product is held as 12.5% then prospective effect be granted to the determination order. The applicant has further invited attention to the schedule entry C-107(c) relating to capital goods which has added to the confusion. Hence, considering the facts, the prospective effect be granted.

8. M/s. Negi Sign Systems has submitted a copy of the Bill of Entry for Home Consumption dt.02.03.2007 which shows the product 'Ink Jet Printer Mutoh VJ-1604E' covered under the CETH 84433910. The applicant has submitted a copy of the Invoice no. 0098/2007-2008 dt.04.05.07 evidencing the sale of 'Ink Jet Printer Mutoh VJ-1604E (Mutoh Inkjet Printer)'. The applicant has collected tax @12.5% in the bill. The applicant has submitted that he has charged tax @12.5% out of abundant caution. Till 31.03.2007, he had collected tax @4%. Hence, it is requested that if the rate of tax on the impugned product is held as 12.5% then prospective effect be granted to the determination order.

03. HEARING

Shri C.B. Thakkar, C.A attended the hearing on dt.02/12/2008 on behalf of both the applicants. It is the contention of the applicant that the impugned product is covered by the schedule entry C-56 of MVAT Act,2002. He submitted that the product is an 'Ink Jet Printer' which is not an 'Ink Jet printing machinery' though it is cleared under printing machinery. He relied on the Rules of Interpretation and submitted that as per the Rules of Interpretation, the product is covered by C-56 and taxable @ 4%. The applicant was told to submit information in respect of his contentions. It was thus stated that though 'Ink Jet Printer' is covered by 8443 which is not notified under the entry C-56, it being an 'Ink Jet Printer' should be covered by C-56 taxable @ 4%. The applicant was told to submit information in respect of a) Diff. between Ink Jet Printer & Machinery & b) Circulation Bond. In the written submissions dt.14.01.2009 and 30.01.2009 in respect of HSN Notes, it is submitted as follows :

1. In the case of M/s. B&V Agro Irrigation Co. (A.65 of 1996 dt.16.12.2000) and Ashuman (A 28 of 2004 dt.13.04.2007), the Hon. Tribunal has held that for Sales Tax purposes the classification is to be done independently read with HSN.
2. While clearing the goods from Customs, the classification in the Bill of Entry is shown as 8443.3910. This heading is for Ink Jet Printing Machines. However, ours are not Ink Jet Printing Machines. Ink Jet Printing Machines are self contained machines and operating without aid of computer. In particular this heading excluded the printers which are to be used with computer & which are covered by CETH 8471.60. Our printers get covered by CETH 8471.60 as they are used with computers only.
3. The Custom authorities were interpreting the above printer as covered by heading 8443 and if, any importer wished to clear it under CETH 8471.60 they used to consider it as disputed clearing. Under such circumstances they make provisional assessment under section 18 of the Customs Act and ask for Security Bond running into double the duty amount. Thus, there will be hanging sword on the head of the importer till the dispute is finally settled. It is under above circumstances, we have avoided clearing the goods under 8471.60. If we clear the goods under 8443, we are finally assessed to duty which we can get reimbursed in our price while selling the said printers in the local market. On the other hand if provisional assessment is accepted we will not only be liable to give Security Bond but the duty will also be settled subsequently and most probably after long gap of time. By that time our printers might have been sold out and we will not have any opportunity to get the duty reimbursed from our buyers. This would have been a shaky and risky position for us and looking to the volume of duty involved, we cannot take any risk. This is the reason why we cleared the goods under CETH 8443.
4. There are so many importers who have cleared the goods under CETH 8471.60. Therefore clearing impugned product under heading 8443 cannot charge the nature of goods nor affect classification under MVAT Act,2002.
5. The fact that under Customs Act, there was confusion about classification of above item is clear from the subsequent amendments made in Central Excise/Customs Act as well as Circular issued by Custom Authorities bearing No. 11/2008 dt.1.7.08. It is clarified that Large Format Ink Jet Printers, capable of connecting to computer were covered by CETH 8471.60 whereas Large Format Printing Machines were covered by CETH 8443.51. After the changes in HSN 2007 which are incorporated in Central Excise heading, the printers are regrouped under CETH 8443.32.50 or 8443.31.00. Thus it is clear that prior to 1.1.07, the Large Format Ink Jet Printers were covered by CETH 8471.60.
6. The Sales Tax Department has issued circular bearing no. 8T of 2007 dt.20.1.07, it is informed that inspite of changes in Central Excise from 1.1.07 the old classification will continue for MVAT purposes. As prior to change from 1.1.07 our item was covered by 8471.60, the said classification would continue today. Therefore 4% tax rate continues today also. In the case of Ricoh India Ltd. (14 VST 491) (WBTT), it has been held that the similar type of printers have been held as covered by CETH 8471.60. In fact in that case the printers were having more than one function like facsimile etc. Still they are held as covered by CETH 8471.60.

7. In Tamil Nadu, the product is taxed @ 4%. All established dealers in Maharashtra in this item are discharging tax @ 4% on above item.
8. Some of the importers are clearing the goods under CETH 8471.60. If the classification is determined only on the basis of such clearance then it will be discriminatory as well as it will create chaos. The importers clearing the goods under 8471.60 will be allowed to charge the tax @ 4% whereas others clearing under 8443 will be held liable to tax 12.5%, though the subject matter is same. The item should be taxed as per its nature & classification under Excise decided independently without reference to the heading declared by the importer in his bill of entry.

In the written submission dt.18.06.2009 with reference to the HSN Notes, it is clarified as follows :

i. Note 5(E) of HSN (2002 Edition) to Chapter 84 refers to machines performing specific functions, etc. our item is printer and not machine. Therefore, the said Note is not relevant in our case.

ii. Note under Heading 84.71 is applicable to machines and not printers. Note 5(E) starts with machines performing a specific function. Therefore, only machines are to be considered while applying the meaning of the Note under Heading 84.71. The reference to ink-jet printers is to such ink-jet printers which work in conjunction with an automatic data processing machines, which is for specific function. Therefore, the quality of ink-jet printer is not to be seen but of the machine with which it is used. If the machine is for specific function then the ink-jet printer used in conjunction therewith may get covered by above Note in heading 84.71. In our case, the ink-jet printers are usable with normal computer system and not related to automatic data processing machines meant for specific function. Therefore, that Note is not applicable to us.

iii. Even for the sake of argument, it is held that the said Note applies to ink-jet printers as such we submit that the said Note is not applicable to us. The said Note talks about printers meant for performing specific function. The meaning of performing specific function is also clarified by giving example in the said Note itself like used in production of pre-press colour proofs, etc. In our case the printers are not meant for such specific function. Our printers are for multiple uses like they can print on different material like flex, fabrics, glass, ceramics etc. In fact there are various uses and applications of our printers which can be briefly described as under :

"Our printers are working on different types of inks and also print on different types of medias.
Inks: Water based dye inks/ Sublimation inks/Reactive dye inks / pigment inks / U.V. inks
Media: papers of various thickness/self adhesive vinyl/flex/textile fabrics like cotton/silk/polyester/ rigid substances such as acrylic / foamboard / glass etc …..
Applications: These printers are not performing a specific task.
For example : We use reactive inks for textile application such as printing of Saree/Bed sheets/curtains on different fabrics like silk and cotton etc.
We use dye based inks for plotting designs which is used by architects, for printing Maps/GIS applications.
We use solvent inks and media such as vinyl/flex, for printing posters/banners/hoardings prints.

We can print directly on rigid substance such as glass or foam board by using U. V. ink.
We use pigment inks and special canted paper to print veneer designs which is then laminated onto wood as designer veneer used by architects.
Depending on the software/inks/media, these printers can be used for multiple applications."

From the above, it can be seen that our printers cannot be considered as meant for performing specific function and hence, the Note cannot apply.

04. OBSERVATIONS

I have gone through all the facts of the case. The issue before me is the rate of tax on the product "Larger Format Ink Jet Printer". Under the MVAT Act,2002, there is a schedule entry C-56 which reads thus – *"IT products as may be notified by the State Government from time to time".* The entry speaks of a notification. Hence, let me reproduce herein the relevant portion of the notifications issued so far for the purposes of this entry :

	Central Excise Tariff Heading	**Description**
Notification dt.01.04.2005	84.71	Automatic data processing machines and units thereof, magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data. Analogue or hybrid automatic data processing machine, Electronic Diaries, Portable digital automatic data processing machine, personal computer, computer systems including personal computers, others Digital automatic data processing machines comprising in the same housing at least a central processing unit and an input and output unit whether or not combined, micro computer / processor, large / mainframe computer, computer presented in form of systems, digital processing units, storage units, input units, output units. Teletypewriter, Data entry terminal, Line printer, Dot matrix printer, Letter quality daisy wheel printer, Graphic printer, Plotter, Laser jet printer, Key board, Monitor, storage units, floppy disc drive. Winchester / hard disc drives, Removal / exchangeable disc drives, magnetic tape drives, Cartridge tape drive, other units of automatic data processing machines, Uninterrupted power supply units (UPS).

It can be seen that "Larger Format Ink Jet Printers" were not covered by the notification dt.01.04.2005.

	Sub Heading No.	**Tariff Item No.**	**Description**
Notification dt.17.10.2005	8471 60	-	Input or output units, whether or not containing storage units in the same housing, including combined input or out put units, line printer, dot matrix printer, letter quality daisy wheel printer, graphic printer, plotter, laser jet printer, **ink jet printer**, monitor, keyboard, scanners, mouse and other units.

Thus, ink jet printer is specifically covered by the above notification. Now, the question is whether "ink jet printer" as notified above covers the "Larger Format Ink Jet Printers" in the present proceedings. It needs therefore to be ascertained as to whether the products put up for determination are covered by the CETH which is notified for the purposes of the entry. The dispute in the present proceedings relates mainly to whether the impugned product is an 'Ink Jet Printer' or whether it is an 'Ink Jet printing machine'. It is submitted that the product is an 'Ink Jet Printer' which is not an 'Ink Jet printing machine' though it is cleared under the CETH for printing machinery. It is claimed that the question has been raised in the backdrop of the dispute of coverage of the product under the CETH 8471 or 8443. Hence, the position under HSN and Central Excise needs to be ascertained. The notification dt.17.10.2005 is based on 2005-06 classification under Central Excise. Hence, 2005-06 position in respect of both the headings needs to be seen. Only the relevant part of the headings is reproduced in respect of all the headings.

CENTRAL EXCISE - 8443

8443	**Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing**
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	-- *Other printing machinery :*
8443 51 00	-- **Ink-jet printing machines**
8443 59	-- Other :
8443 59 10	--- Flat bed printing presses
8443 59 20	--- Platen printing presses
8443 59 30	--- Proof presses
	--- *Machinery for printing repetitive word or design or colour :*
8443 59 41	---- On cotton textile
8443 59 49	---- Other
8443 59 90	--- Other
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HSN [2002 Edition] - 8443

84.43	**Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 84.42; ink-jet printing machines, other than those of heading 84.71; Machines for uses ancillary to printing (+)**
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	- Other printing machinery :
8443.51	-- **Ink-jet printing machines**
8443.59	-- Other

It can be seen that **Ink-jet printing machines** are covered by the CETH 8443 51 00 [HSN 8443.51]. The HSN Notes to the Heading 84.43 mention that the ***Heading covers Ink-jet printing machines, except those specifically designed to form a unit of heading 84.71 (see the paragraphs concerning printers in Part (I) (A) of the Explanatory Note to this heading)***. Hence, I would look at the heading 84.71 to understand its scope and coverage.

CENTRAL EXCISE - 8471

8471	**Automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included (+)**
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8471 60	- *Input or output units, whether or not containing storage units in the same housing :*
8471 60 10	--- Printer :
8471 60 21	---- Line printer
8471 60 22	---- Dot matrix printer
8471 60 23	---- Letter quality daisy wheel printer
8471 60 24	---- Graphic printer
8471 60 25	---- Plotter
8471 60 26	---- Laser jet printer
8471 60 27	---- **Ink jet printer**
8471 60 29	---- Other

HSN - 8471

8471	**Automatic data-processing machines and units thereof; magnetic or optical readers, machines for transcribing data onto data media in coded form and machines for processing such data, not elsewhere specified or included**
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8471.60	- Input or output units, whether or not containing storage units in the same housing :

It can be seen that **Ink-jet printers** are covered by the CETH 84716027. Under Part (I) (A) of the Explanatory Note to this heading, a unit is to be meant as follows :

A unit is to be regarded as being a part of a complete digital data processing system, if it satisfies the following conditions:

(a) It is of a kind solely or principally used in an automatic data processing system;
(b) It is connectable to the central processing unit either directly or through one or more other units; and
(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

The paragraphs concerning printers in Part (I)(A) of the Explanatory Note to this heading could be reproduced thus :

"*In accordance with Note 5(D) to this Chapter, printers, keyboards, X-Y co-ordinate input devices and disc storage units which satisfy the conditions of items (b) and (c) above, are in all cases to be classified as constituent units of data processing systems.*

The foregoing provisions is, however to be considered in the overall context of Note 5 to Chapter 84 and is therefore applicable subject to the provisions of paragraph (E) of that Note, by virtue of the introductory part of paragraph (B) thereof. ***Thus ink-jet printers working in conjunction with an automatic data processing machine but having, particularly in terms of their size, technical capabilities and particular applications, the characteristics of a printing machine designed to perform a specific function in the printing or graphics industry (production of pre-press colour proofs, for example) are to be regarded as machines having a specific function classifiable in heading 84.43.***"

With a view to understand the meaning of the above paragraphs, the entire Note 5 (A) to (e) may be seen as follows :

*"**5.-(A)** For the purposes of heading 84.71, the expression "automatic data processing machines" means:*

a) Digital machines, capable of (1) storing the processing program or programs and at least the data immediately necessary for the execution of the program; (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 program which requires them to modify their execution, by logical decision during the processing run;

b) Analogue machines capable of simulating mathematical models and comprising at least : analogue elements, control elements and programming elements;

c) Hybrid machines consisting of either a digital machine with analogue elements or an analogue machine with digital elements.

***(B)** Automatic data processing machines may be in the form of systems consisting of a variable number of separate units. Subject to paragraph (E) below, a unit is to be regarded as being a part of a complete system if it meets all of the following conditions :*

(a) It is of a kind solely or principally used in an automatic data processing system;

(b) It is connectable to the central processing unit either directly or through one or more other units; and

(c) It is able to accept or deliver data in a form (codes or signals) which can be used by the system.

***(C)** Separately presented units of an automatic data processing machine are to be classified in heading 84.71.*

***(D)** Printers, keyboards, X-Y co-ordinate input devices and disk storage units which satisfy the conditions of paragraphs (B) (b) and (B) (c) above, are in all cases to be classified as units of heading 84.71.*

***(E)** Machines performing a specific function other than data processing and incorporating or working in conjunction with an automatic data processing machine are to be classified in the headings appropriate to their respective functions or, failing that, in residual headings."*

From a conjoint reading of the above 2 headings, the following can be deduced :

1. Ink-jet printing machines and Ink-jet printers are classified under different headings.
2. Heading 84.43 covers Ink-jet printing machines, except those specifically designed to form a unit of heading 84.71.
3. Ink-jet printers working in conjunction with an automatic data processing machine but having, **particularly in terms of their size, technical capabilities and particular applications, the characteristics of a printing machine designed to perform a specific function in the printing or graphics industry** (production of pre-press colour proofs, for example) **are to be regarded as machines having a specific function classifiable in heading 84.43**."

Thus from the above, it is clear that even if a printer is working in conjunction with an automatic data processing machine, it will be classifiable in heading 84.43, if in terms of size, technical capabilities and particular applications, the printer possesses characteristics of a printing machine designed to perform a specific function in the printing or graphics industry. Thus, being a part of an automatic data processing machine is not the differentiating thing between printing machines and printers. ***To fall in the heading 8443, it is imperative that a printer if a part of an automatic data processing machine possesses the characteristics of a printing machine designed to perform a specific function in the printing or graphics industry.***

After having seen the distinguishing features of the two headings, I need now to discuss about changes effected in Chapters 84 & 85 of the Central Excise Tariff w.e.f 01.01.2007 so as to align the same with commitments to the World Customs Organisation. As rightly pointed by the applicant, a Circular was issued by the Sales Tax Department [Trade Cir.- 8 T of 2007 Dt :20.01.07] clarifying as follows :

"3. As a result of these changes, the tariff heading applicable to several of the products notified as information technology products have changed. It will, therefore, be necessary to issue a fresh notification to give effect to the changes made by Government of India with effect from the 1st January 2007. Steps are being taken to issue a new Notification. This is likely to take some time.

4. It is clarified that pending issue of the new Notification, all of the products earlier described in column 3 of the State Government Notification dated 17th October 2005 will continue to be treated as information technology products for the purpose of the Entry C-56 irrespective of the change in the Central Excise Tariff heading for these products. This clarification takes effect from the 1st January 2007."

The Circular seeks to clarify that due to administrative reasons, the products as notified in the Notification dated 17th October 2005 would be regarded as "information technology products" irrespective of the change in the Central Excise Tariff headings for these products. Hence, it would be unnecessary to discuss herein the changes effected in HSN and under Central Excise. However, the applicant has sought to make a point by making a reference to the changes. The applicant submits that after the changes in HSN 2007 which are incorporated in Central Excise, the printers are regrouped under CETH 8443.32.50 or 8443.31.00 and thus it is clear that prior to 1.1.07, the Large Format Ink Jet Printers were covered by CETH 8471.60. We have already seen the headings 84.43 and 84.71 and the principal difference between the "printers" of the heading 84.71 and the printers as "printing machines" of heading 84.43. The products put up for determination need to be examined with reference to their characteristics vis-à-vis the requirements for classification under the two headings. However, I may as well albeit cursorily look at the position after 2007 as follows :

CENTRAL EXCISE - 8443

8443	**Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of heading 8442; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof**
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	- *Other printers, copying machines and facsimile machines, whether or not combined:*
8443 31 00	-- Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or to a network
8443 32	-- *Other, capable of connecting to an automatic data processing machine or to a network :*

8443 32 10	--- Line printer
8443 32 20	--- Dot matrix printer
8443 32 30	--- Letter quality daisy wheel printer
8443 32 40	--- Laser Jet printer
8443 32 50	--- **Ink Jet Printer**
8443 32 60	--- Facsimile machine
8443 32 90	--- Other
8443 39	-- *Other*
8443 39 10	--- **Ink-jet printing machine**

HSN [2007 Edition] - 8443

84.43	**Printing machinery used for printing by means of plates, cylinders and other printing components of heading 84.42; other printers, copying machines and facsimile machines, whether or not combined; parts and accessories thereof (+)**
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	- Other printers, copying machines and facsimile machines, whether or not combined :
8443.31	-- Machines which perform two or more of the functions of printing, copying or facsimile transmission, capable of connecting to an automatic data processing machine or to a network
8443.32	-- Other, capable of connecting to an automatic data processing machine or to a network
8443.39	-- Other

The applicant has further sought to invite attention to the Circular issued under the Central Excise Act relating to classification of Large Format Printers, the gist of which could be seen briefly as follows :

*"**2.** The issue was examined. Prior to implementation of HS 2007 changes, the classification of printers was under sub-heading 8471 60, if these were capable of connecting to a central processing unit and able to accept/deliver data in the form used by the ADP system, as an output unit of an ADP. However, inkjet printing machines, other than those as above classifiable under 8471 were separately classified under sub-heading 8443 51. Subsequently, the classification of Printers was revised in HS 2007 and grouped under single heading 8443. The …………………………………………………….*

***3.4**. Based on the above details, the classification of Large Format Printers has been examined by the Board. It is felt that Large Format Printers are primarily Inkjet Printers but are capable of printing larger width, can print on roll of paper or other media and can also print on multiple media. These printers do not have an in-built ADP machine and cannot do any processing by themselves and do not have any independent function sans the use of a computer. They are solely dependent on the ADP machine or network for inputs to carryout the activity of printing. The Large Format Printers are connectable to an ADP machine or to a network by simply attaching a cable and thus satisfy the conditions of connectability enumerated in explanatory notes.*

***4**. Based on the above discussions, it could be concluded that Large Format Printers which satisfy the conditions of connectability as stated above, are to be classified under tariff heading 8443 32 50 as 'Ink Jet printers' and under tariff heading 8443 31 00, if they have more than one function of printing, copying or facsimile transmission. ……………………………………………………."*

We have seen that after changes in 2007 ink-jet printing machines and ink-jet printers have been classified in the same heading. The above Circular has reference to classification of Large Format Printers after the changes. Also, the Circular does not throw any light on the ink-jet printing machine under the heading 84433910. The fact remains that there is a difference between Ink-jet printing machines and Ink-jet printers. And the precise question before me is to determine whether the impugned products are Ink-jet printing machines or an Ink-jet printers. In the present case, the Sales Tax Department has already clarified that the products as notified in the Notification dt.17.10.2005 would be regarded as "information technology products" irrespective of the changes in the Central Excise Tariff headings. Hence, the classification needs to be ascertained on the basis of the then categorization. The two headings for consideration herein are 84.43 and 84.71. It is seen that even if a printer is working in conjunction with an automatic data processing machine, it will be classifiable in heading 84.43, if in terms of size, technical capabilities and particular applications, the printer possesses characteristics of a printing machine designed to perform a specific function in the printing or graphics industry. To ascertain the above point, I would have to look at the features of the impugned products. The same could be reproduced thus :

INK JET PRINTER MUTOH VJ-1604E – [M/S. NEGI SIGN SYSTEMS]

[I] BROCHURE GIVEN BY THE APPLICANT

Corresponds to media up to a width of 1,625mm. Can also correspond to media with low stiffness by adjusting pressure appropriately.

- *Two-step pressure adjustment according to media stiffness.*
- *Adopted a new rigid unit that controls printing noise and horizontal oscillation.*
- *Equipped with sub bag system that allows ink replacement during printing.*
- *Adopted a maintenance mirror mechanism that simplifies print head maintenance.*
- *Provided with Ethernet 100BASE-TX/10BASE-T, which corresponds to various network environments, as a standard feature.*
- *Low noise design with operational noise of 50dB or less.*

[II] EXTRACTS FROM THE INTERNET

Mutoh VJ1604E - *Brilliant Photo Print Wave Printing Technology*

Third-Generation Eco-Solvent Ultra Printer

- *Three models to choose from with maximum print widths of 1300mm, 1625mm & 2600mm.*
- *Wide 4 colour Eco-Solvent Ultra Printer (6 colour on VJ-2606).*
- *New generation i°wide modeli± 1440 dpi piezo print head.*
- *Space saver design - safe & easy-to-use system.*
- *Suitable for indoor and outdoor graphics.*
- *Print speeds up to 14.8 m²/hr.*
- *Variable Dot technology.*

MUTOHi¯s ValueJet Inks

Mutoh ValueJet TM Eco-Solvent Ultra Inks are the third generation Eco-Solvent Inks. Therefore, they print directly onto uncoated materials, such as adhesive vinyl and banners. However, they emit less harmful VOCi¯s (volatile organic compounds) into the working environment.

Wide range of media compatibility MUTOH ValueJet TM Eco-Solvent Ultra Inks print onto not only uncoated materials, but also coated materials for eco-solvent ink.

Excellent durability, MUTOH ValueJet Eco-Solvent Ultra Inks have reached an outdoor UV-stability of up to three years without lamination at tests.

ValueJet 1204-48", ValueJet 1604-64" and ValueJet 2606-100"

Size ranging from 48" - 100" the ValueJet saves time and money by providing flexibility & ease of use, performing any kind of job with hassle free & low maintenance.

The ValueJet eco-solvent inks will last outdoors without lamination.

The ValueJet is easy to install, operate and maintain and is sized to accomodate the most popular media.

Mutoh's Patented 1^2 : Intelligent Interweaving Print Technology allows increased print speeds and expectional image quality with increased accuracy and consistency of dot size and thus eliminating bandings.
The ValueJet offers improved paper feed accuracy, ink changes on-the-fly, and three individually controlled heaters for fast drying.

Mutoh Announces ValueJet 1604 Affordable 64" Eco-Ultra Printer Source: Mutoh Europe, 2007-Mar-02
Mutoh Europe nv announced today the new ValueJet 1604, a 64" four-colour eco printer incorporating Mutoh's new patent pending Intelligent Interweaving print technology, called "i²". ValueJet 1604 is a compact and easy-to-use printer for durable indoor and outdoor graphics, providing an exceptional price/performance ratio. The printer utilises Mutoh's third-generation eco-solvent inks.
*ValueJet 1604 (VJ-1604) is an addition to the ValueJet 1204 eco printer launched by Mutoh Europe in September 2006. Suited for indoor and outdoor applications, **this new printer is specifically designed with sign makers in mind**, both starting-out full colour sign makers and established businesses with water-based inkjet printers. **Offering a media width of 1625 mm (63.97") and a printing width of 1615 (63.58"), ValueJet 1604 produces full-colour posters, banners, backlit panels, POS displays, notices, signs and stickers.***
*VJ-1604 incorporates a new generation "wide model" 1440 nozzle piezo print head. Print resolutions offered are 540 x 720 dpi, 720 x 720 dpi, 1440 x 720 dpi and 1440 x 1440 dpi. The printer has 12 pre-defined print modes split up in three groups, i.e. a **"Quality Mode" for photographic quality, a "Graphics Mode" for sign printing on vinyl and a "Banner Mode", for high speed production of banners.***
ValueJet 1604 will offer impeccable print quality (720 x 720 dpi, 4 pass) up to 15 m² on banner and up to 8.5 m² on vinyl. Impeccable print quality is made possible on the printer thanks to Mutoh's new patent pending intelligent interweaving printing technology, called "i²". Mutoh has taken a totally new approach with its i² technology (pronounced i squared). Ink is laid down in carefully optimised wave forms, not the straight lines used by all other wide-format inkjet printers.
The result is a drastic reduction or even total elimination of the typical difficulties inherent in conventional digital inkjet printing, such as horizontal banding, step mismatch banding, ink bleed and mottle and the visible effects of missing or misfiring nozzles, even when prints are viewed close to (< 1 m).
Easy to set up and utilise even by inexperienced operators, ValueJet 1604 uses Mutoh's third generation Eco-Solvent Ultra inks. Ink comes in 220 ml ink cassettes. Eco Ultra inks are based on non-aggressive solvents. As they do not spread any harmful VOCs in the working environment, there is no need for forced ventilation. As such, the printer can be placed in normally ventilated office environments.
Prints made with Mutoh's Eco-Solvent Ultra inks are UV and water resistant for up to three years outdoors, without lamination. Lamination is recommended for fleet, floor graphics and other applications where prints are exposed to intensive mechanical stress or abrasion.
The standard ValueJet 1604 comes with a stand with lockable caster wheels, an ink starter set (1x4 CMYK Eco Solvent Ultra ink) and a good shape kit.
The ValueJet 1604 printer also incorporates a set of scroller supports mounted at the back of the machine. These supports enable non-motorised unwinding of media (2"/3" core) up to a weight of 30 kg.
For motorised winding/unwinding of roll media, Mutoh offers two different optional systems. The "T Winder 30" is a tension winder system enabling motorised winding up to a media load of 30 kg. The second system called "Unwinder/Winder 100" provides motorized unwinding and winding of media rolls up to 100 kg.

[III] EXTRACTS FROM THE WEBSITE OF M/S. NEGI

Mutoh a worldwide leader and manufacturer of large format commercial inkjet printers announced the ValueJet Printers for indoor & outdoor durable printing applications. Mutoh's ValueJet printers are easy to install, operate and maintain and is sized to accommodate the most popular media. The ValueJet printers provide exceptional image quality and best in class print speeds at a price that is indeed, a value.
The ValueJet's improved print speeds and exceptional image quality are made possible through a combination of Mutoh's revolutionary new X-Rail design and new piezo print head technology. The ValueJet has 1440 total nozzles and variable dot technology to produce outdoor durable, photo quality images at resolutions of 540, 720 and 1440 dpi.
The ValueJet piles on the value creating brilliant images using Mutoh's Eco-Ultra inks, available in 220ml & 440ml cartridges. Eco-Ultra inks are Mutoh's 3rd generation of eco inks, which last up to three years outdoors, without lamination. The ValueJet provides additional productivity without compromising image quality by offering 10 print modes including the new 540x720 dpi mode that is perfect for banners. The ValueJet incorporates a new and exclusive Mutoh printing technique that reduces banding typically associated with bi-directional inkjet printing.
The 10 print modes allow for a wide range of printing possibilities on a variety of inexpensive, uncoated media.

Thus from the features of the product reproduced above, it can be seen that

1. The product is used for **indoor and outdoor graphics applications** such as Art Exhibits, Signage, Building Wraps, Billboards, POP Displays, Advertising Banners, Flags, Vehicle Graphics, Floor Displays, Backlit Boxes, Reprogaphics, etc.
2. it is suited for indoor and outdoor applications - ***this new printer is specifically designed with sign makers in mind,*** ………………..
3. The printer has 12 pre-defined print modes split up in three groups, i.e. a **"Quality Mode" for photographic quality, a "Graphics Mode" for sign printing on vinyl and a "Banner Mode", for high speed production of banners.**
4. It provides additional productivity without compromising image quality by offering 10 print modes including the new 540x720 dpi mode that is **perfect for banners**.
5. It incorporates a new and exclusive Mutoh **printing technique that reduces banding** typically associated with bi-directional inkjet printing.

The specifications of the product with respect to size, application, weight, maximum media width, print width, print speed, operation humidity range – all these factors point to the fact that the product is a machine used in industry and not a printer used for data processing with any general purpose computer. From the features of the product, it can be seen that the product is covered by the description under HSN which distinguishes between the headings 8471 and 8443 - ***ink-jet printers working in conjunction with an automatic data processing machine but having, particularly in terms of their size, technical capabilities and particular applications, the characteristics of a printing machine designed to perform a specific function in the printing or graphics industry (production of pre-press colour proofs, for example) are to be regarded as machines having a specific function classifiable in heading 84.43.*** The present product is having, particularly in terms of its size, technical capabilities and particular applications, the characteristics of a printing machine designed to perform a specific function in the printing or graphics industry. The website of the applicant, M/s Negi Sign Systems, advertises the product as – ***Ability to take on commercial outdoor jobs with the quality and ease of an indoor printer at a speed that delivers 25-70 banners a day in a size that accommodates any work space saving time and money.*** The clearing of the product after the 2007 HSN changes under the heading 84433910, which is for ink-jet printing machine, also endorses the classification.

In view of the above, the product **Ink Jet Printer Mutoh VJ-1604E,** with regard to its features, would not merit classification under the heading 8471 60 notified for the purposes of the notification dt.17.10.2005 which is based on 2005-06 classification under Central Excise. My observation finds support from the following ruling dt.29.12.2006 [prior to changes] given under the United States International Trade Commission Rulings and Harmonized Tarriff Schedule.

The subject matter was the tariff classification of wide format inkjet printer and a wide format inkjet printer/cutter. The wide-format sublimation digital inkjet printer was designed to produce graphics for a range of wide-format applications, i.e. flags, banners and other soft signage. The unit features eight piezo print heads and an extended capacity ink system. It produces graphics up to 548 square feet per hour. Sublimated prints can be transferred from paper to surfaces such as fabric, plastic, metal and porcelain. Printing width is 73.6 inches wide and the printing resolution is 720 dpi max. There was no indication in the submitted data that this unit is principally used on textiles. The unit was intended to be used in conjunction with a separate personal computer. It was held that the unit was excluded from heading 8471, Harmonized Tariff Schedule of the United States (HTSUS), which provides for automatic data processing machines, by virtue of Note 5(E) to Chapter 84 as they are performing functions other than data processing. The applicable subheading for the wide-format sublimation digital inkjet printer was held to be 8443.51.5000, HTSUS, which provides for Printing machinery used for printing by means of printing type, blocks, plates, cylinders and other printing components of heading 8442; ink-jet printing machines, other than those of heading 8471; machines for uses ancillary to printing; parts thereof: Other printing machinery: Ink-jet printing machinery: Other.

The above ruling confirms the fact that large/wide format printers even if used in conjunction with an automatic data processing machine but performing functions other than data processing are classified in the heading 8443.51.5000, the corresponding classification under the Central Excise Act is **8443 51 00 -- Ink-jet printing machines**. A similar issue as in the present case was discussed in the case of Lipi Marketing [2005-(184)-ELT-0316–CESAT]. The point at dispute was the correct classification of the Ink-jet printer imported by the appellants. It would be useful to reproduce the observations therein –

Note 5(D) refers to Note 5(B) which in turn is subject to Note 5(E) according to which when the machine performs specific function of data processing, it should be classified under the heading appropriate to its respective functioning, even though the machine is used in conjunction with automatic data processing machine. In the present case, no doubt, the imported ink-jet printer satisfy condition 5(D). In that sense, one can classify it under Heading 84.71. But note 5(E) also cannot be ignored. Note (E) has been amplified in the HSN explanatory notes and it specifically states that ink-jet printers working in conjunction with an automatic data processing machine, but having particularly in terms of their size, technical capabilities, the characteristics of a printing machine designed to perform a specific function in the printing or graphics industry (production of pre-press colour proofs, for eg.) are to be regarded as machine having a specific function are classifiable under Heading 84.43. ***In our view, on going through the explanatory note we come to an understanding that ink-jet printers which are normally used in conjunction with computer in office or home would rightly be classifiable under Heading 84.71.*** *However looking into the specifications of the machines imported by the appellants, we find that*

they are used in Industry in the sense that these machines print in rolls and sheets. They are not normal papers. They are actually PVC or plastic media and are used mainly in Signage Industry. Hence, we are of the considered view that the impugned goods are rightly classifiable under Heading 84.43. Chapter Heading 8443 reads as follows :
"Printing machinery used for printing by means of the printing type, blocks, plates, cylinders and other printing components of Heading 8442; Ink-Jet printing machines, other than those of Heading 8471 machines for uses ancillary to printing".

Even this heading includes ink-jet printing machine other than those of Heading 84.71. That means, ***ink-jet printers are capable of two classifications****,* ***one classification under Heading 84.71 and the other is 84.43. A reading of Heading 84.43 reveals that machines included therein are mainly used in printing/graphics industry.*** *After going through the specifications of the imported ink-jet printers, 84.43 and not under Heading 84.71.*

The above cases should put to rest any controversy with respect to the classification of ink-jet printers and machines. I would now look at the other 2 products of the applicant, M/s. Apsom Technologies. The products and their features are as follows -

[A] LARGE FORMAT INKJET PRINTER MEGAJET -3204

[I] BROCHURE PROVIDED BY THE APPLICANT

<General Feature>

1. *Spectra Print head provides high productivity and reliability.*
2. *Max. Printing width 3.2m (126").*
3. *720dpi high resolution enables vivid and high quality images.*
4. *Linear scale encoder enables high resolution and precise printing results.*
5. *Constant control of air pressure inside head enables smooth ink flow without inks blockage.*
6. *Powerful and stable head carriage shaft with double boxbeam structure for quality printing.*
7. *Auto heating system placed heaters before printing and after printing enhances ink penetration into media.*
8. *Safely designed double drying fan shortens drying time and allows prints to dry before being rolled.*
9. *Detachable platen enables switch between vacuum fan and Mesh type platen.*
10. *Built in PC and software enables easy operation and control of printing features with user friendly interface.*
11. *Enhanced take-up system accommodates smooth loading and unloading of heavy rolls.*

.... *Megajet is the wide format printer that works and keeps on working for you!. Perfect for sign manufacturers and print providers, Megajet is designed to handle heavy rolls of banner, scrim, backlit, flexface media….whatever you need to produce your quality signs and banners.*

[II] WEBSITE OF M/S. APSOM

The technology of DGI takes Inkjet Printers up on a new level of standard in the world wide format printing industry. Recognized as a leading player in the global market in competitiveness of price, quality, reliability etc., DGI will ensure you a real satisfaction of your printing works, enhancing a creativity as well as convenience by simple unattended operation. The special feature includes

- *Long life Four color Xaar-128 Piezo Print Heads (4 Print Heads & 8Head Print Heads) with Aluminum base offers consistent color & high quality printing.*
- *Higher Resolution 400 x 200 dpi.*
- *True Solvent-based pigmented inks provide UV-durable, water and abrasion-resistant prints for outdoor use.*
- *Automatic Print Head Cleaning System*
- *Stable Automatic Media Feeding System.*
- *Automatic Ink Refill & Ink Level Detection with Alarm System.*
- *Automatic Media Drying System.*
- *Powerful Carriage Shaft and transport system with LM carriage guide for quality Printing.*
- *Strong and stable stand of Truss Type.*
- *Models available: PS-3206 & XP-3204T.*

[III] EXTRACTS FROM THE INTERNET

At a Glance:

- *3.2 Meters wide*
- *4/6 Spectra Nova (256 nozzles) Print heads*
- *91 Sq.M /hr Print speed*
- *720 dpi Resolution*

Key Features:

- *Hi –speed , Hi- Resolution printing*
- *Fast and durable print heads with flexible ink controls*
- *Two way printer bed –(a) Mesh Media (b) Vacuum Hold down bed*
- *Effective front media take up with the help of compressed air tight media roller*
- *Negative air pressure ink supply system*
- *Adjustable pressure inside of sub ink tank*
- *In-built computer for control and operations*
- *Automatic head cleaning system*
- *Advanced linear encoder for high resolution and unattended printing.*
- *Gear type tension bar keep supplying uniform force to the surface of media evenly.*
- *Printing on various thickness media with adjustable Head Base height*
- *Stable automatic Media feeding system / Automatic Ink refill system*
- *Double fans to shorten the drying time of printed media*

Applications:

- *Corporate Hoardings - Banners*
- *Cine Hoardings*
- *Billboards*
- *Large Format backlit signage with out joints.*
- *Backdrop*

[B] INKJET PRINTER JV3-160SP 63.9" INK JET PRINTING M/C

[II] BROCHURE PROVIDED BY THE APPLICANT

Faster Speed! – Higher Quality! Multiple features with JV3-160SP

- *High resolution*
- *A new force for productivity*
- *Three-year outdoor durability*
- *Brand-new white ink*
- *4 heads, double in printing speed*
- *Automatic capping system*
- *Intelligent heater system*
- *Equipped with automatic drying fan as standard device*
- *Capable of printing full-color and white at the same time.*

[II] EXTRACTS FROM THE INTERNET

At a Glance

- *1.6 Meters wide*
- *4 EPSON Print heads*
- *27 Sq.M /hr Print speed*
- *1440 dpi Resolution*
- *Variable dots technology*

Key Features

- *The intelligent heater system that automatically controls the optimal heating temperature for each media.*
- *Automatic capping system avoids clogging*
- *New platen component enables to choose variety of media*
- *Stable automatic media feeding system*
- *Automatic take-up system*
- *Automatic drying fan for media drying system shortens drying time*
- *New automatic print head cleaning system*
- *Printing on various thickness media with adjustable Head Base height up to 3 to 4.5mm*
- *Precise and stable media feeding provided by AC servo motor*

Applications :

- *In shop signage*
- *Backlit vinyl's indoor and outdoor*
- *P.O.P / P.OS*
- *Fleet graphics and bus shelter*
- *Decals*
- *Stickers*
- *Photo/ Fine arts reproduction*
- *Visual branding solution*
- *Wall and window graphics*
- *Exhibition and event banners*

The new JV3-160SP is an affordable solution for large format solvent printing. This model produces 63 inch wide output at speeds up to 422 square feet per hour (twice the speed of its predecessor). It is capable of producing both 360x360 dpi output as well as photo quality printing at 1440dpi.

The 160SP prints on inexpensive untreated media and is capable of both 4-color and 6-color printing making it highly versatile. This unit also allows you to choose between solvent ink as well as Mimaki's new mild solvent 2 (MS2) ink.

Output from the 160SP will last for up to three years resisting both water and UV damage. The 160SP includes an automatic capping system which significantly reduces maintenance and prevents the head nozzle from clogging when not in use. It features an intelligent heater system that sets optimum heating temperatures specified in the software RIP media profile settings. You can actually control both the pre-heater and print heater individually using Raster Link Pro.

Mimaki JV3-160SP Highlights:

- *Fast output – Suitable for high-speed, rush jobs as well as continuous unattended printing*
- *Ease of Use – Automatic take-up devices included as standard equipment*
- *Digitally Controlled – Intelligent heating system controlled digitally via Raster Link Pro*
- *Superior Media Handling – Teflon platen components provide a smooth surface and improved media handling*

The interesting point to note in respect of both the products described above is that they have been sought to be classified as inkjet printers but are referred to as follows :

- **JV3-160SP 63.9"** is referred to as **Solvent inkjet plotter.** The brochure of the applicant refers to the product as - ***JV3-160SP will be the leading solvent inkjet plotter.***
- **Megajet - 3204** is referred to as a "**Digital printing machine**".

I have taken care to note down the areas in which these two products find application. The specifications of both the products with respect to their size, application, weight, maximum media width, print width, print speed, operation humidity range – all these factors point to the fact that the products are machines used in industry and not as printers used for data processing with any general purpose computer. It is seen that both the above products possess, particularly in terms of size, technical capabilities and particular applications, the characteristics of a printing machine designed to perform a specific function in the printing or graphics industry. The product **Megajet - 3204** has a built in PC and software which makes the said product a complete machine by itself.

Considering all the above factors, I am of the opinion that the products have been rightly classified as an "inkjet printing machines" under the CETH 84433910. The products **JV3-160SP 63.9" and Megajet – 3204,** with regard to their features, would not merit classification under the heading 8471 60 notified for the purposes of the notification dt.17.10.2005 which is based on 2005-06 classification under Central Excise.

I need herein to comment on the applicants' argument that the classification of the impugned products should be made not with regard to their classification under Central Excise but it should be done independently read with HSN. From the above deliberations, it is quite obvious that the interpretation was done on the basis of -

1. The nature of the product
2. The basic difference between an inkjet printer and an inkjet printing machine as laid down by the International Commodity Classification.

In the Bill of Entry produced by the applicants', the classification of the products under Central Excise appears to have been made on the basis of the principles decided by the HSN.

There is no specific schedule entry for any of the three products discussed above and therefore the products would be classified under the residuary schedule entry E-1, thereby attracting tax @12.5%.

05. PROSPECTIVE EFFECT

Both the applicants have requested that if the rate of tax on the impugned product is held as 12.5% then prospective effect be granted to the determination order. A prayer for prospective effect needs always to be weighed in the light of the circumstances of the case. The facts are to be seen vis-à-vis the position of law prevailing then. The position of law needs then to be seen with reference to any ambiguity surrounding the provisions or, as the case may be, a statutory misguidance of any kind.

In the present case, both the applicants' have submitted as follows in respect of the plea for prospective effect to the determination order, if it is held otherwise :

1. While clearing the goods from Customs, the classification in the Bill of Entry is shown as 8443.3910. This heading is for Ink Jet Printing Machines. The Custom authorities were interpreting the above printers as covered by heading 8443 and if any importer wished to clear it under CETH 8471.60, they used to consider it as disputed clearing. Under such circumstances they make provisional assessment under section 18 of the Customs Act and ask for Security Bond running into double the duty amount. Thus, there will be hanging sword on the head of the importer till the dispute is finally settled. It is under above circumstances, we have avoided clearing the goods under 8471.60. If we clear the goods under 8443, we are finally assessed to duty which we can get reimbursed in our price while selling the said printers in the local market. On the other hand if provisional assessment is accepted we will not only be liable to give Security Bond but the duty will also be settled subsequently and most probably after long gap of time. By that time our printers might have been sold out and we will not have any opportunity to get the duty reimbursed from our buyers. This would have been a shaky and risky position for us and looking to the volume of duty involved, we cannot take any risk. This is the reason why we cleared the goods under CETH 8443.

2. One of the applicants' has produced a copy of a Bill of Entry dt.28/02/07 in respect of the product VJ 1604E in which the CUSTOMS & CETH is shown as 84433990 whereas the RITC is shown as 84716029. This heading is for "Other".
3. The applicants' have sought to invite attention to the Circular issued under the Central Excise Act relating to classification of Large Format Printers.
4. The applicants' have further invited attention to the schedule entry C-107(c) relating to capital goods which has added to the confusion.

I have carefully considered the above points. It is not disputed that the present products are ink-jet printers. Even the HSN Notes specifically say that these are ink-jet printers **but** having regard to their size, technical capabilities and particular applications, they are to be regarded as printing machines. The applicants' are of the opinion that the aforementioned HSN principle would not be applicable to their products as from the uses of their products, it cannot be said as they are meant for performing specific functions. According to them, "specific functions" would not cover the functions performed by their products. Thus, the issue is one of interpretation. The applicants' have treated their products as "inkjet printers" for the purposes of the Sales Tax Act. As regards classification under Central Excise, the applicants' have pleaded that the same was beyond their control. Now, since the products were treated as "inkjet printers" and the said category being covered by the notification, the applicants' have claimed that their products are covered by the notification and thereby liable to tax @4%. The applicant has given a copy of Bill of Entry dt.28/02/07 in which the CUSTOMS & CETH is shown as 84433990 whereas the RITC is shown as 84716029. The applicant, it seems was under the impression that being connectable to an automatic data processing machine would place the products in the category of "inkjet printers" and not "inkjet printing machines"

Considering all the above points in totality, I am of the opinion that there existed some ambiguity in respect of the classification of the impugned products. The ambiguity was further guided by the wrong interpretation. Further, since the excise tariff heading under which the applicants' treated their products was included in the notification, the applicants' were all the more sure that their products would get the benefit of the notification rate. In the circumstances, it is felt that the plea for prospective effect needs to be considered favourably. The Commissioner is empowered to protect the liability of the applicant prior to the determination order. This is a discretionary power of the Commissioner to be exercised judicially and from the provisions of section 56(2) of the Maharashtra Value Added Tax Act, 2002, it is clear that, grant of prospective effect to a determination order depends on the facts and circumstances of each case. Hence, I proceed to look at the treatment as regards tax levy under the MVAT Act, 2002 meted out to the products by the applicants' as follows :

APSOM : The applicant has collected tax @4% in the bills presented for determination. The applicant was charging tax @4% from 01.04.2005. It is requested that if the rate of tax on the impugned product is held as 12.5% then prospective effect be granted to the determination order. If the applicant has not collected taxes @12.5% then considering the facts as discussed above, it is felt that the determination order needs to be given prospective effect from the date of this order.

NEGI : The applicant has collected tax @12.5% in the bill. The applicant has submitted that he has charged tax @12.5% out of abundant caution. The applicant further informs that till 31.03.2007, he had collected tax @4%. Hence, it is requested that if the rate of tax on the impugned product is held as 12.5% then prospective effect be granted to the determination order. In the instant case, the applicant has collected tax @12.5 % but he has informed that he had collected tax @4% till 31.03.2007. If the applicant has not collected taxes @ 12.5% in the period till 31.03.2007, considering the facts as discussed above, it is felt that the determination order in he case of the applicant needs to be given effect from 01.04.2007. The liability of the applicant till 31.03.20076 is protected if the applicant has not collected taxes @ 12.5 % till 31.03.2007.

To confirm the above stand, I would cite herein the DDQ dt.15.06.2001 in the case of M/s. Arihant Agencies and M/s. SAC Packaging wherein on the point of prospective effect, it was ordered that the liability is protected upto 31.3.2001 *provided that they have neither collected taxes nor reimbursed themselves to that extent.* In appeal, the applicant's had argued to delete the condition of tax collection. The Hon. MSTT in its order dt.06.08.2007 [36 MTJ 581] rejected the arguments and confirmed the order of the Commissioner.

06. In the backdrop of the discussion held hereinabove, it is ordered as below:

ORDER

(u/s 56 (1) and (2) of the Maharashtra Value Added Tax Act, 2002)

No. DDQ 11/2007/Adm-3/17 & 18/B - 1 Mumbai, dt.02.09.2009

This set of two applications involving a common question as regards the rate of tax in respect of the product "InkJet Printing Machine" referred to as "Larger Format Ink Jet Printer" is herewith answered in the **TABLE** as reproduced below.

Name of the applicant	Invoice No. & Date	Products	Schedule entry & Rate of Tax	Remarks	Prospective Effect
M/s. Apsom Technologies (India) Pvt. Ltd.	ATPL/A/ 825 dt.29.03.07	Inkjet Printer JV3-160SP 63.9" Ink Jet Printing M/c	**E-1 – 12.5%**	The claim of the applicant as regards the product being an inkjet printer covered by the Central Excise Heading 8471 60 notified in the Notification dt.17.10.2005 is rejected. For reasons as elaborately discussed in the proceedings, it is observed that the products of both the applicant's would not be covered by the description "ink-jet printer" as notified in the aforementioned notification.	If the applicant has not collected taxes @12.5% then considering the facts as discussed in the order, the determination order is made prospective in effect from the date of this order.
	ATPL/B/ 67 dt.09.05.07	Large Format Inkjet Printer Megajet - 3204			
M/s. Negi Sign Systems	0098/2007 -2008 dt.04.05.07	'Ink Jet Printer Mutoh VJ-1604E (Mutoh Inkjet Printer)'	**-DO-**	**-DO-**	If the applicant has not collected taxes @12.5% for the period till 31.03.2007, considering the facts as discussed in the order, the determination order is made prospective in effect from 01.04.2007.

(SANJAY BHATIA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.