

Diebold Systems Pvt. Ltd. vs The Commissioner Of Commercial Tax (2005)

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JUDGMENT H.L. Dattu, J. (Karnataka High Court)

1. The appellant is a public limited company engaged in the manufacture and supply of Automated Teller Machines (ATM's for short). In view of the configuration and for the purpose for which is put to use, the appellant company is of the view that the sale of ATM's is eligible to single point levy of tax under Sec 5(3)(a) of the Karnataka Sales Tax Act, 1957 (hereinafter for the sake of brevity referred to as 'Act, 1957'). However, in order to have the views of the department in this regard, in particular, the Advance Ruling Authority constituted by the Commissioner of Commercial Taxes in exercise of his powers under Section 4 of the Act, the appellant company had filed an application before the Advance Ruling Authority in Form 54 as provided under Rule 27-E (1) of the Karnataka Sales Tax Rules, 1957 ('Rules' for short), seeking clarification on the rate of tax applicable under the Act on sale of Automated Teller Machines.

2. In response to the notice of the hearing issued by the Advance Ruling Authority, Sri Mohan Mudkavi, learned Chartered Accountant along with the Vice-President of the Company had appeared before the Authority and represented the facts and also had produced the literature and description of the ATM's. The basic submission that was made was, ATM is a combination of a Computer and it runs on a processor and the purpose for which it is put to use, is to dispense with cash and therefore, had requested the Authority to classify ATM's as goods falling under Entry 20 of Part 'C' of the Second Schedule to the Act and not Electronic goods falling under Entry 4 of Part 'E' of Second Schedule to the Act.

3. The Advance Ruling Authority (Majority View) after referring to the dictionary meaning of the word "Automated Teller Machines" and the product literature produced by the appellant company, by their order No. CLR.CR. 6/2002-03 dated 1.10.2002 have clarified that ATM's can be classified under the caption "computer terminals" and therefore, ATM's would fall under Entry 20 (ii) (b) of Part 'C' of Second Schedule to the Act and the basic tax applicable is four percent.

4. The Chairman of the Advance Ruling Authority has dissented from the majority view and has opined, that the goods in question would fit into the description of electronic goods, parts and accessories thereof and therefore, falls under Entry 4 of Part 'E' of the Second Schedule to the KST Act and the basic rate of tax applicable is 12%.

5. The Commissioner of Commercial Taxes being of the view, that the Authority for clarification and Advance Ruling, has erroneously classified ATM's as "computer terminals" and the basic rate of tax is at 4%, instead of classifying the product as electronic goods falling under Entry 4 of Part 'E' of the Second Schedule to the Act and liable to tax at 12% and thereby has caused prejudice to the interest of the revenue, had initiated suo-motu revisional proceedings under Section 22-A(1) of the Act by issuing a show cause notice dated 2.9.2003, interalia directing the appellant company to show cause, why the order passed by the Authority for clarification and Advance Ruling vide order No. CLR.CR. 6/2002-03 dated 1.10.2002 should not be set aside and the 'goods' in question should not be treated as "electronic goods" falling under Entry 4 Part 'E' of Second Schedule to the Act liable to tax at 12%. After receipt of the show cause notice, the appellant company has filed its reply dated 16.9.2003, interalia requesting the Commissioner of Commercial Taxes to accept the order passed by the Advance Ruling Authority dated 1.10.2002 and to drop the the proposal made in show cause notice dated 2.9.2003.

6. The Commissioner of Commercial Taxes, after considering the reply filed by the appellant company, has confirmed the proposal made by him in the show cause notice dated 2.9.2003, by his order dated 29.11.2003. The findings and the conclusions reached by the Commissioner of Commercial Taxes is as under:

"As stated by the dealer himself, ATM consists of apart from the other things, computer (i.e., mother board with processor), computer peripherals such as RAM, drives, Key board, monitor, mouse, etc., and also software. In common parlance or popular sense, ATM is a Teller Machine (that is, which disburses cash issues statement of account etc.,) which is automated with the aid of computer, computer peripherals, software and other devices. Technically as contended by the dealer it can be held to be a computer

terminal. However, going by the principles of common parlance as applicable to interpretation of entries under the KST Act, it cannot be classified as computer terminal for the purpose of the KST Act when it is not specifically included in the entry relating to computer terminals. The Hon'ble Supreme Court in the case of Deputy Commissioner of Sales Taxes (Law), Board of Revenue (Taxes), Ernakulam v. GS. Pai and Company (reported in 45 STC 58) has held that 'while interpreting entries in the sales tax legislation, the words used in the entry must be construed not in any technical sense from the scientific point of view but as understood in common parlance'. Similar view has been taken by the Hon'ble Supreme Court and High Courts in many other cases."

7. Aggrieved by the aforesaid order passed by the Commissioner of Commercial Taxes in SMR CR No. 04/2003-04 dated 29.11.1993, the appellant company is before this Court in this appeal filed under Section 24(1) of the KST Act.

8. The question of law raised for our consideration and decision are as under.

"I. Whether the Commissioner of Commercial Taxes has power and authority under Section 22-A(2) of the Act, to revise an order of the Advance Ruling Authority passed under Section 4 of the Act?

II. Is ATM a computer and whether it would fall under Entry 20(i) of Part 'C' of Second Schedule to the Act?"

9. At the time of hearing of the appeal, the learned Senior Counsel Sri K.P. Kumar, would submit that in view of the amendment made to the provisions of Section 4 of the Act and the corresponding amendment of the Rules, he would not press for an answer on the first question of law raised in the memorandum of appeal. In view of the submission made by the learned Senior Counsel, we need not consider and answer the first legal issue raised by the appellant company in the appeal for our consideration and decision.

10. To answer the second question of law raised, the entries which the authorities have considered to give their ruling requires to be noticed and therefore, they are extracted:

Entry 20 of Part 'C' of the Second Schedule has amended by Karnataka Act No. 3/1998, which is given effect from 1.4.1998, is as under:

"20. (i) Computer of all 1.4.98 to 31.12.99 Four percent
kinds namely,- 1.1.2000 to 31.3.2001 Eight percent
main frame, mini, 1.4.01 to 31.5.03 Four percent
personal, micro From 1.6.2003 Five percent
computers and the
like and their parts

(ii) Peripherals, that is
to say.-

(a) All kinds of 1.4.98 to 31.12.99 Four percent
printers and 1.1.00 to 31.3.02 Eight percent
their parts, 1.4.02 to 31.5.03 Four percent
namely,-
Dot matrix, ink jet, From 1.6.2003 Five percent
laser, Line,
line matrix and the
Like

(b) Terminals, 1.4.98 to 31.12.99 Four percent
scanners, multi 1.1.00 to 31.3.02 Eight percent
media kits, 1.4.02 to 31.5.03 Four percent
plotters, modem From 1.6.2003 Five percent

and their parts

(iii) Computer 1.4.98 to 31.12.99 Fourpercent
consumables 1.1.00 to 31 3.02 Eightpercent
namely.- 1.4.02 to 31.5.03 Four percent
stationery, floppy From 1.6.2003 Five percent
disks, CD ROMs,
DAT tapes, Printer
ribbons, printer
Cartridges and
cartridge Tapes.

(iv) Computer 1.4.99 to 31.12.99 Four percent
Cleaning Kit 1.100 to 31.3.02 Eight percent
1.4.02 to 31.5.03 Four percent
From 1.6.2003 Five percent

(v) Computer 1.4.01 to 31.5.03 Four percent
Software From 1.6.2003 Five percent

11. Entry 4 of Part 'E' of the Second Schedule to the Act as amended by Karnataka Act 5/1996 with effect from 1.4.1996 reads as under:

"Entry 4: Electronic Goods and parts and accessories thereof other than those falling under any other entry of this Schedule.

(The basic rate of tax for the relevant assessment year was 32 percent)."

12. The primary question that requires to be considered and decided in this appeal is the rate of tax applicable on the sale of 'Automated Teller Machines under KST Act, 1957? Alternatively, whether the revising authority was justified in clarifying that ATM's would fall under Entry 4 of Part 'E' of Second Schedule to the Act and the basic rate of tax on the sale of ATM's is at 12%?

13. ATM's are not included under Entry 20 Part 'C' of the Second Schedule to the Act. However, the appellant company is of the view that ATM is a combination of a computer and it runs on a processor and therefore, the 'goods' in question would fall under Entry 20(i) of Part 'C' of the Second Schedule to the Act, and not under Entry of Part 'E' of Second Schedule to the Act.

14. In order to resolve the controversy between the parties to the lis, we need to know what is ATM and how it works?

ATM is the acronym for Automated Teller Machine. This Machine has a data terminal with two input and four output devices. The ATM connects to and communicates with a host processor that is analogous to an Internet Service provider. Then as a way of supporting the Machine to the host processor, dial up or leased lines are used. With the dial up, the Machine would dial into the host processor, using a standard telephone line and modem. With the leased line, the Machine is connected through the host processor through what is called a four-wire, point to point, dedicated telephone line. The ATM does not have many parts, There is a card reader, which is what captures a person's account information that is stored on the magnetic strip located on the back of the ATM/debit card. This information is actually used by the host processor in routing the transaction to the appropriate bank. Then in has a 'Key pad', which is used by the cardholder to tell the machine what type of transaction is needed. It has an 'electric eye' that is used for cash dispensing mechanism. In addition to the eye, the ATM has a 'sensor' that is capable of evaluating the thickness of each of the bills being dispensed.

15. The world's first ATM was installed in Enfield Town in the London Borough Enfield, London, on June 27, 1967 by Barclay's Bank. This instance of the invention is credited to John Shepherd-Birron, although George Simjian registered patents in New York,

JSA, in the 1930's and Don Wetzel and two other Engineers from Docutel registered a patent on June 4, 1973.

16. ATM's are found at banks, grocery stores, shopping racks, convenience stores and some times on the side of the road. They are used by the bank's customers to make cash withdrawal and check their account balances at any time without the need of human teller. Many ATM's also allow people to deposit cash or cheques, transfer money between their bank or even buy postage stamps. ATM's are known by a wide variety of names. Some of which are more common in certain countries than others. Examples include Automated Teller Machine, Automated Banking Machine, Bank Box, Cash Box, Cash Dispenser, Cash Point, Hole in the Wall, Mac Machine Mini Bank, MAC Machine, Robotic Teller, Tele Banco, Ugly Teller, etc.

17. The book on Computers, concepts and applications for users by Robert C. Nikenson has explained the configuration and its uses in the day-to-day affairs by banks, stores etc. According to the learned Author, an ATM is not a computer by itself. It is connected to a computer that performs the tasks requested by the person using the ATM. The computer is connected electronically to many ATM's that may be located some distance from the computer.

18. In so far as its use is concerned, the learned Author says that when you use an ATM, you are using a computer. When you insert your card and press keys on the ATM, you are entering input into the computer. The computer process the input to perform the banking transactions you requested and you receive output in the form for a paper summary and cash. The computer is a multiple user computer, because different people use it through many ATM's at one time. When you use an ATM, you are using the computer to keep with your personal banking needs.

19. In modern ATM's customer's authenticate themselves by using a plastic card with a magnetic stripe, which encodes the customer's account number, and by entering a numeric pass-code called a PIN (Personal Identification Number) number, which in some cases, may be changed using a machine. Most ATM's are connected to authorisation of a transaction by the card user or authorising Institution via communications network.

20. Now we need to notice what is a "computer terminal", since the majority view of the Advance Ruling Authority is that ATM is a "computer terminal" and therefore, it would fall under Entry 20 (ii)(b) of Part 'C' of the Second Schedule to the Act.

21. In Columbia Encyclopedia, Sixth Edition, computer terminals are described as under:

A device that enables a computer to receive or deliver data. Computer terminals vary greatly depending on the format of the data they handle. For example, a simply early terminal comprises a typewriter keyboard for input and a typewriter-printing element for alpha-numeric output. A more recent variation includes the key board for input and a television screen to display the output. The screen can be Cathode-ray tube or a gas plasma panel, the later involving an Ionized Gas (sandwiched between glass layers) that glows to form dots which inturn, connect to form lines. Such displays can present a variety of output, ranging from simple alpha numeric to complex graphic images used as design tools by Architects and Engineers. Portable terminals frequently use liquid crystal displays because of their low power requirements. The terminals of pen-based computers use a stylus to input hand writing on the screen. Touch sensitive terminals accept input made by touching a pressure-sensitive panel in front of a menu displayed on the screen. Other familiar types of terminals include store checkout systems that deliver detailed printed receipts and use later scanners to read the bar codes on packages and automatic teller machines in banks.

22. Having noticed what is ATM and its use, and computer terminals, we intend to refer to the observations made by the Apex Court and the manner in which Schedule to the entries under the Statute requires to be interpreted in fiscal laws, since the revising authority has held while accepting that the ATM'S are technically can be held to be a 'computer terminal', however, by common parlance, it cannot be classified as computer terminal for the purpose of the Act. The Supreme Court in the case of TATA CONSULTANCY SERVICES v. STATE OF ANDHRA PRADESH AIR 2004 SCW 6583, has observed.

"61. We, in the case, are not concerned with the technical meaning of computer and computer programme as in a fiscal statute plain meaning rule is applied. (See Partington v. Attorney-General, (1869) LR 4 HL 100,p. 122)

62. In interpreting an expression used in a legal sense, the Courts are required to ascertain the precise connotation, which it possesses in law.

63. It is furthermore trite that a Court should not be overzealous in searching ambiguities or obscurities in words, which are plain. (See *Inland Revenue Commissioner v. Rossminster Ltd.* (1980) 1 All ER 80, p.90)

64. It is now well settled that when an expression is capable of more than one meaning, the Court would attempt to resolve that ambiguity in a manner consistent with the purpose of the provisions and with regard to the consequences of the alternative constructions. [See *Clark & Tokeley Ltd. (t/a Spellbrook) v. Oakes* [1998(4) All ER 353].

65. In *Inland Revenue Commissioner v. Trustees of Sir John Aird's Settlement* [1984] Ch 382, it is stated:

"..... Two methods of statutory interpretation have at times been adopted by the Court, One, sometimes called literalist, is to make a meticulous examination of the precise words used. The other sometimes called purposive, is to consider the object of the relevant provision in the light of the other provisions of the Act- the general intendment of the provisions. They are not mutually exclusive and both have their part to play even in the interpretation of a taxing statute."

23. The learned Senior Counsel Sri K.P. Kumar appearing for the appellant company, relying on the definition of computers' that finds a place in, would firstly contend that ATM's are nothing but computers and therefore, fits into the description of "computers of all kinds" that finds a place under Entry 20 (i) of Part 'C' of Second Schedule to the Act. The learned Senior Counsel did take all the pains to explain the configuration of ATM, and how it works, by referring to the dictionary meaning of the word "computers" and further, to explain the meaning of the words 'namely', 'and the like' and 'their parts', the learned Senior Counsel relies on the observations made by the Supreme Court in the case of *INDIAN ALUMINIUM COMPANY LIMITED v. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (APPEALS) AND ANR.* [2001] 121 STC 510.

24. Next, the learned Senior Counsel would contend that the revisional authority can invoke his powers of revisions, only, if the order passed by his subordinate authority is not only erroneous but also prejudicial to the interest of the revenue and if two views are possible, the Commissioner in exercise of his supervisory jurisdiction normally should not interfere with the order passed by his subordinate authorities. In aid of his submissions, the learned Senior Counsel relies on the observations made by Gujarat High Court in the case of *COMMISSIONER OF INCOME TAX v. ARVIND JEWELLERS* [2003] 259 ITR 502 and the observations made by the Punjab & Haryana High Court in the case of *COMMISSIONER OF INCOME TAX v. MAX INDIA LTD.*, 268 ITR 128.

25. Sri Anand, learned Govt. Advocate would contend that ATM's are electronic goods, may be operated with the assistance of computer technology in the common parlance theory, they cannot be construed as computers or their terminals. The learned Govt. Advocate has produced before us voluminous literature on computers, only to demonstrate that ATM's by no stretch of imagination could be construed either as computers or as a computer terminals and the Advance Ruling Authority was not justified in answering the clarification sought for by the appellant, that, ATM's are "computer terminals" and they can be fit into one of the sub-entries under Entry 20 Part 'C' of Second Schedule to the Act. In his view, the revisional authority was justified in concluding that ATM's are electronic goods.

26. Now the question that would arise for consideration and decision in this appeal is, is an ATM is a "computer" as contended by learned Senior Counsel or a "computer terminal" as classified by the Advance Ruling Authority (Majority view) in its order dated 1.10.2002? or is it "electronic goods" are classified by the Commissioner of Commercial Taxes in his order dated 29.11.2003, while revising the order passed by the Advance Ruling Authority?

27. The information Technology Act, 2000, is an Act to provide legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication, commonly referred to as "electronic commerce", which involve the use of alternatives to paper-based methods of communication and storage of information to facilitate electronic filing of documents with the Government Agencies, etc. In the dictionary clause of the Act, the meaning of the word "computer" is defined to mean any electronic, magnetic, optical or other high speed data processing device or system

which performs logical, arithmetic and memory functions by manipulations of electronic, magnetic or optical impulses and includes all input, output, processing, storage, computer software, or communication facilities which are connected or related to the computer in a computer system or computer network. The "computer network" means the interconnection of one or more computers through the use of satellite, microwave, terrestrial line, or other communication media and terminals or a complex consisting of two or more interconnected computers whether or not the interconnection is continuously maintained.

28. The purpose and object of Information Technology Act, is to recognise the transactions carried out by means of electronic data interchange and other means of electronic communication. To suit the purpose and object of the Act, the Parliament has defined the expression "computer" by giving a very wide meaning, but at the same time, by using the expression "means" immediately after the words "computers", the Legislature intends to make it clear that the definition is exhaustive and no other meaning can be assigned to the expression than what is included in the definition.

29. The Schedule to an Act is very much part of fiscal enactment. It is enacted by the hand of the Legislature. The Schedule in an Act sets down things and objects and contains their names and descriptions. The expressions in the Schedule have no evocative function. They can neither enlarge nor cut down the meanings or articles or things specifically named in the list. Therefore, the enlarged definition of "computers" in the Information Technology Act cannot be made use of interpreting an Entry under fiscal legislation.

30. Entry 20 of Part 'C' of the Second Schedule to the Act firstly speaks of computers of all kinds namely, main frame, mini personal, micro computers, and the like and their parts. The question of law raised by the appellant before us is whether ATM is a computer and as such squarely falls under Entry 20 (i) Part 'C' of the Second Schedule to the Act, though the Advance Ruling Authority on the request made by the appellant for clarification has opined, that ATM's are "terminals" and would fall under Entry 20 (ii) (b) of Part 'C' of the Second Schedule to the Act, Sri K.P. Kumar, learned Senior Counsel would submit that ATM's are "computers" in view of the words like "namely" and "and the like" in the Entry immediately after naming the commodity i.e. computer of all kinds. In aid of his submission, the learned Senior Counsel has relied on the observations made by the Supreme Court in the case of *INDIA ALUMINIUM COMPANY LTD. v. ASSISTANT COMMISSIONER OF COMMERCIAL TAXES (APPEALS) AND ANR.* [2001] 121 STC 510. The case was under the provisions of Entry Tax Act. The question before the Court was whether furnace oil is not liable to tax under Entry 11 of the First Schedule to the Karnataka Tax on Entry of Goods Act, 1979. The Entry which came up for consideration was "all petroleum products that is to say petrol, diesel, crude oil, lubricating oil, transformer oil, brake or clutch fluid, bitumen (asphalt) tar and others but excluding LPG, Kerosene and Naphtha for use in the manufacture of fertilizers". The Apex Court while interpreting the use of the words "and others" in the Entry has observed that the use of the words "and others" in the Entry refers to petroleum products other than those which are specifically mentioned therein. To arrive at this conclusion, the Court has noticed that the Legislature has specifically excluded from the Entry aviation fuel, liquid petroleum gas, kerosene and naphtha for use in the manufacture of fertilizers and if not for his exclusion, even those products could have been included in the expression "petroleum products" in view of the language employed in Entry 11 of the Act.

31. The observation made by the Apex Court in the aforesaid decision would not come to the assistance of the learned Senior Counsel for the appellant company in view of the language employed in Entry 20 (i) of Part 'C' of the Second Schedule to the Act. The first limb of the Entry speaks of all kinds of computers and immediately thereafter, the word 'namely' is used. It only indicates what is included in the previous term or alternatively, it can be said the word "namely" imports enumeration of what is comprised in the preceding clause. (See. *STATE OF BOMBAY v. BOMBAY EDUCATION SOCIETY* . Then there is enumeration of the goods such as 'main frame, mini, personal, micro computers and the like'. The use of the word "and the like" is only to include computers, which are akin to, main frame, mini personal, micro computers. To consider whether an item falls within the meaning of an Entry of a Schedule to an Act, it has to be seen whether its qualities would fall in any one of the entires or in any one of the items included under that Entry. In the present case, since ATM is not a computer by itself, it would not fall under Entry 20 (i) of Part 'C' of Second Schedule to the Act.

32. The Advance Ruling Authority (Majority View) has classified ATM's as 'terminals' falling under Entry 20 (ii) (b) of Part 'C' of the Second Schedule to the Act, since ATM machine is also understood as computer terminal in the commercial world. This view of

the Advance Ruling Authority was not strongly supported by learned Senior Counsel, and a passing remark was made, that if it does not fall under Entry 20 (i) of Part 'C' of the Second Schedule to the Act, it can be brought under "terminal" as envisaged under Entry 20 (ii) (b) of Part 'C' of the Second Schedule to the Act.

33. Entry 20 (ii) of Part 'C' of Second Schedule to the Act speaks of "peripherals". The Entry is as under:

(ii) Peripherals that is to say,-

(a) All kinds of printers and their parts namely, dot matrix, ink jet, laser, line matrix and the like

(b) Terminals, scanners, multimedia kits, plotters, modem and their parts.

Immediately after the expression "peripherals", the Legislature has used the expression "that is to say, all kinds of printers and their parts and terminals, scanners, multi-media kits, plotters, modem and their parts".

The expression "that is to say" is the commencement of ancillary clause, which explains the meaning of the principal clause. This expression is explained by the Apex Court in the case of *STATE OF TAMILNADU v. PYARELAL MALHOTRA* and in that, the Court has observed that the expression "that is to say" is employed to make clear and fix the meaning of what is to be explained or defined. Such words are not used as a rule, to amplify the meaning while removing a possible doubt for which purpose the word 'includes' is generally employed. In unusual cases, depending upon the context of the words "that is to say", this expression may be followed by illustrative instances. The Supreme Court in the case of *SAIT RIKHAJI FURTARNAL v. STATE OF A.P.* 1991 Suppl. (I) SCC 2002 has observed that the expression "that is to say" is exhaustive and not illustrative. The meaning of the expression "peripheral equipment" is defined in the Illustrated Computer Dictionary (Donald D. Spencer - Third Edition) to mean input/output units and auxiliary storage units of a computer system, attached by cables to the Central Processing Unit used to get data in the date out, and to act as a reservoir for large amounts of data that cannot be held in the Central Processing Unit at one time. The word "terminal" means key board/display or key board/printer device used to input programs and data to the computer and to receive the output from the computer.

The Legislature having introduced the phrase "peripherals" under sub-entry (ii) of Part 'C' of the Second Schedule to the Act, has defined the term by using the expression "that is to say". The definition must determine the application of the phrase. In our view, the context in which the expression "that is to say" is used in exhaustive and not illustrative. Therefore, since ATM's are not included under sub-entry 20 (ii) (b) of the Part 'C' of Second Schedule to the Act, by construction, it cannot be brought under that Entry.

34. Entry 4 of Part 'E' of the Second Schedule to the Act speaks of electronic goods, and its parts and accessories thereof other than those falling under any other Entry of the Second Schedule to the Act.

35. The word "Electronic" has been defined by Megraw-Hill in Dictionary of Scientific and Technical Terms (Second Edition), as pertaining to electron devices or to circuits or systems utilising electron devices, including electron tubes, magnetic amplifiers, transistors and other devices that do the work of electron tubes. The word 'electron' has been defined as a stable elementary particle with an indivisible charge of negative electricity, found in all atoms and acting as a carrier of electricity in solids.

36. With this back ground, let us come back to the findings and the conclusions reached by the revisional authority to hold that ATM's cannot be considered as 'computer terminals' but can be considered only as 'electronic goods'. The revisional authority had issued a notice dated 2.9.2003 under Section 22-A of the Act, proposing to revise the order passed by the Advance Ruling Authority and further proposing to classify ATM's as electronic goods, and liable to tax at a higher rate, on the ground that the Advance Ruling Authority has erroneously, classified ATM as computer and the same has caused prejudice to the interest of the revenue. A detailed reply had been filed by the appellant company, after receipt of the show cause notice, justifying the findings and the conclusion reached by the Authority for clarifications and Advance Rulings, and nowhere in the reply the appellant company had conceded that ATM works on the principles of electronics and is commonly understood to be electronic goods. Why we have noticed the aforesaid statement is only because, the revisional authority while concluding and confirming the proposal made by him in the show cause

notice, specifically observes this aspect of the matter to conclude his findings, apart from other reasons, that the ATM's are electronic goods. These passing observations made by the revisional authority cannot be said that there is total non-application of mind by the authority, while holding that ATM's are electronic goods. Apart from noticing the so called concession made by the appellant/assessee, the revisional authority has assigned other reasons to support his conclusion and therefore, the stray observation made by the revisional authority can be just ignored, while considering the other findings and conclusions reached by the revisional authority.

37. In so far the order passed pursuant to his show cause notice, the revisional authority firstly, observes that ATM's are not computers of all kinds, for the reason, that ATM's are not mentioned in any of the sub-entries of Entry 20 of Part 'C' of Second Schedule to the Act. Secondly, the entries in a Taxing Statutes requires to be construed not in their scientific or technical sense, -but as understood in common parlance or popular sense, Then the revisional authority goes on to observe that ATM consists of apart from other things, computer (i.e. Mother Board with the processor), computer peripherals, such as RAM, Drives, Key Board, Monitor, Mouse etc., and also software. In common parlance or popular sense, ATM is a Teller Machine (that is which disburses cash, issues statement of account, etc.) which is automated with the aid of computer, computer peripherals, software and other devices, and therefore, technically, as contended by the dealer, it can be held to be computer terminal. However, going by principles as applicable to be interpretation of entries under the KST Act, it cannot be classified as computer terminal for the purpose of the Act, when it is not specifically included in the entry relating to computer terminals.

38. The Supreme Court in several of its judgment has laid down the rule of interpretation for articles of daily use and commonly traded items, which are mentioned in the Taxing Statutes. The Rule is that if there is no definition in the Statute, we should follow for tax purposes the definition not of the dictionaries or of technical books but of commercial parlance i.e. the popular meaning. The intention of Legislature is, that in Taxing Statutes, when terms are used of common usage, it is the common man's understanding of the articles which prevails over the technical man's concept. The place of scientific definition based on technical books, technical literature, dictionaries, etc., is relevant. When the goods are technical, there is no market and so, no market parlance. At the same time, if the goods are not technical, the definition in the market parlance would apply. It only means, that if the goods are technical, common parlance or commercial parlance would not apply. Therefore, in our opinion, the revisional authority is firstly justified in observing that though technically goods in question may fall within the meaning of the expression "computer terminals", but in common parlance theory, they are not understood so.

39. An Automatic Teller Machine, in our view, is an electronic device, which allows a bank's customer to make cash withdrawals, and check their account balances at any time without the need of human teller, probably that most widely used means of "electronic funds transfer". From the literature and the books on computers produced before us, we are of the view, that ATM is not a computer by itself and it is connected to a computer that performs the tasks requested by the person using ATM's. The computer is connected electronically to many ATM's that may be located from some distance from the computer. In common parlance, it is understood as electronic device and therefore, the revisional authority is justified in holding that ATM's are electronic goods and the levy of tax and the sale of ATM's requires to be made under Entry 4 of Part 'E' of Second Schedule to the Act.

40. The learned Senior Counsel, lastly contended that if two views are possible in understanding the nature of the commodity and the rate of tax applicable on the sale of such commodity, the revisional authority should not exercise his supervisory jurisdiction under Section 22-A of the Act. This is a well settled legal principle and there cannot be any dispute on this proposition of law. But at the same time, it requires to be kept in view that the revising authority is authorised under the Act to revise an order, which is erroneous and prejudicial to the interest of the revenue. What is erroneous and prejudicial to the interest of the revenue is explained by the Apex Court and this Court is several of its decisions. The repetition of this settled principle need not be made for the purpose of deciding this legal issue canvassed by learned Senior Counsel for the appellant company.

41. Section 22-A(2) of the Karnataka Sales Tax Act is amended with effect from 1.4.2002 and the amended provision authorises the Commissioner to invoke his suo-motu revisional powers, when there is divergent opinion among the members of the Advance Ruling Authority, and if the majority opinion is erroneous and prejudicial to the interest of the revenue. That is what that has been done by the Commissioner in the present case. Therefore, in our opinion, there is no jurisdictional error committed by the Commissioner of Commercial Taxes invoking his powers under Section 22-A of the Act.

42. In the result, appeal fails and accordingly, it is rejected. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.