

Rajasthan Tax Board, Ajmer

- 1. Appeal No. 1365/2015/Jaipur
- 2. Appeal No. 1366/2015/Jaipur
- 3. Appeal No. 1367/2015/Jaipur
- 4. Appeal No. 1368/2015/Jaipur

Assistant Commissioner,
Anti-Evasion III, Rajasthan,
Jaipur

Appellant

VERSUS

M/s A.K. Surgicals,
25/11, Kaveri Path,
New Sanganer Road, Jaipur

Respondent

D.B.

SHRI NATHU RAM, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri N.K. Baid,
Dy. Govt. Advocate
Shri Yashasvi Sharma, F.C.A.
Authorised Representative

for Revenue

for Assessee

Dated : 16/08/2018

JUDGMENT

1. These appeals have been filed by the Revenue (hereinafter called the "appellant") against orders of the Appellate Authority-I, Commercial Taxes, Jaipur (hereinafter called the "appellate authority") who vide his appellate order dated 13.02.2015, has set aside the orders of the Assistant Commissioner, Anti-Evasion-III, Rajasthan, Jaipur (hereinafter called the "assessing officer" or "AO") dated 13.11.2013 passed apparently under section 24(6) of the Rajasthan Value Added Tax Act, 2003 (hereinafter called the "RVAT Act") . The details of the appellate as well as the assessment orders are mentioned below :-

Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Authority's order Details (Amount disputed in present Appeals)		
		Appeal No.	order dated	order dated	Tax	Interest
1365/2015	2006-07	435/AA-I/RVAT/Jaipur/2013-14	13.02.2015	13.11.2013	30104	12141
1366/2015	2007-08	436/AA-I/RVAT/Jaipur/2013-14	13.02.2015	13.11.2013	59684	17342
1367/2015	2008-09	437/AA-I/RVAT/Jaipur/2013-14	13.02.2015	13.11.2013	839561	443396
1368/2015	2009-10	438/AA-I/RVAT/Jaipur/2013-14	13.02.2015	13.11.2013	481911	177928





2. As a common issue is involved in all these appeals, therefore, these are disposed off by a common order. Copy of the order be placed on each relevant appeal file.
3. Brief facts leading to the present appeals are that the respondent assessee is a supplier of items used in hospitals, dispensaries, nursing homes etc., e.g. fowler beds, labour table, patient examination table, operation table, patient bed side lockers, dredging carriages, instrument cabinet, revolving stools, instrument table and trolley, self-propelling chair and the like. The respondent charged tax @ 4% or 5% (rate as applicable for Schedule-IV goods during the relevant period- the rate of tax was 4% till 08.03.2010 and from 09.03.2010 it was 5%) on these items. The AO while finalizing the assessments for the years 2006-07 to 2009-10 disallowed these items to be taxable at the lower rate and instead held these items to be covered under the residual entry of Schedule-V and levied additional tax @ 8.5% or 9% along with the interest.
4. Being aggrieved of the assessment orders, the respondent preferred appeals before the appellate authority who vide his order dated 23.12.2010 rejected the appeals against which the appeals were filed before the Tax Board. The Rajasthan Tax Board vide its order dated 10.01.2013 remanded back all the cases to the AO for adjudication afresh in light of the various judgments as cited in that RTB order. The AO decided these remanded cases on 13.11.2013 and accepted some of the items to be classified under the items used in hospital and not as furniture, but found some other items not to be covered by the referred judgments and assessed them under the residuary tax rate and levied differential tax and interest.
5. Aggrieved of these assessment orders, the respondent preferred appeals before the appellate authority who vide his order dated 13.02.2015, accepted the appeals and set aside the orders passed by the AO. It is against these appellate orders that the revenue is in appeal before the Tax Board under section 83 of the Act.



QJM

6. Learned Deputy Government Advocate appearing for the appellant-Revenue submits that the appellate authority has grossly erred in setting aside the levy of additional tax and interest on some of the items supplied by the respondent. He further submits that in compliance of the Tax Board order dated 10.01.2013, the AO has given considered thought on the judgments of the various Hon'ble High Courts and has accepted the respondent assessee's claim about the items being used as hospital equipments, namely- patient beds (including fowler beds), operation tables, bed side lockers, dressing carriages, instrument cabinet, revolving stools, instrument table and trolley, self-propelling chair, over bed table. However, some other items were not found to be covered by the referred judgments hence, the differential tax and interest has rightly been levied by the AO, therefore, the appellate authority has wrongly set aside the assessment orders in question.
7. Learned counsel for the respondent submits that the items on which additional tax has been levied by the AO, squarely fall under the category of the equipments used in hospitals and would fall under entry 86 of the Schedule-IV. He further requests that the appellate authority has rightly set aside the additional levy, therefore, the order of the appellate authority is correct and appeals of the revenue may be rejected. He further referred the following case laws:
- i) ACTO Vs Atlas Surgical Co., (1997) 107 STC 296 (RTT)
 - ii) Imperial Surgico Ind. Vs Commissioner, Sales Tax UP, (1969) 23 STC 201 (All)
 - iii) CST Vs Associated Dental and Medical Supply Co., (1976) 37 STC 336 (Bom.)
 - iv) State of Gujrat Vs Lax Tools Manufacturers, (1980) 46 STC 115 (Guj.)
8. We have gone through the submissions of both the parties and perused the relevant record. The only question involved in present appeals is as to whether the items used in hospital for examination and treatment of patients and allied services thereto, would be covered under entry 86 of the Schedule-IV or not. For ready reference, the said entry as operative during the period has to be perused, which is as follows:

"86 Medical equipment/devices and implants."



9. On perusal of the assessment orders, it appears that the AO has allowed some of the items to be categorized under Entry 86 of Schedule-IV and disallowed some of the items which were also used for treatment of patients or related services, and levied tax as per the Schedule-V goods, specifically treating them as 'furniture', which are- (i) Labour table, (ii) Examination table, (iii) Railing (iv) Cylinder Trolley, (v) Foot step, (vi) Drip stand/I.V. stand, (vii) Dressing trolley, (viii) Monitor trolley, (ix) Mayos Trolley, (x) Back rest, (xi) Foam/mattresses, and (xii) Linen trolley.
10. The Hon'ble Rajasthan Taxation Tribunal (in short the 'RTT') had occasion to examine the similar issue in the case of **ACTO Vs Atlas Surgical Co. (1997) 107 STC 296 (RTT)**. The issue before the Hon'ble RTT was- whether the sale by the assessee to various hospitals and the Medical and Health Department of hospital cots, beside lockers, stretchers, stretcher trollies, wheel chairs, operating tables, food wagons, commode chair, examination chair, etc., were exigible to tax at the rate applicable to "metal furniture" at the relevant time which was 12 per cent. The assessee took them not to be covered by the description "metal furniture" and proceeded on the basis that the sale of these items were exigible to tax at the general rate applicable to the residuary items which was 8 per cent.
11. The Hon'ble RTT while relying upon the judgment of the Hon'ble Allahabad High Court in **Imperial Surgico Ind. Vs Commissioner of Sales Tax, U.P.'s case (1969) 23 STC 201 (All)** has held as under:

"We have no hesitation in opting for the construction placed on the meaning of the word "furniture" by the Allahabad High Court. In hospitals and medical establishments must necessarily keep for the cure and care of patients out of functional necessity and are not intended to make hospitals and medical establishments appear to be well-appointed."

12. The Hon'ble Allahabad High Court in the case of **Imperial Surgico Ind. Vs Commissioner of Sales Tax, U.P. (supra)** dealt

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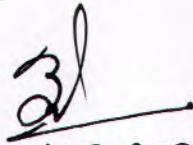
with an issue where the petitioner was a manufacture and seller of operation tables, beds including fowler beds, bedside lockers, dressing carriages, instrument cabinets, revolving stools, instrument trollies, instrument tables and self-propelling chairs etc. The Sales Tax Officer held these items to be 'furniture' and levied tax at a higher rate then what was applicable on the 'unclassified items'. The Hon'ble Allahabad High Court has held as under:

"The test, in our opinion, is not whether the articles are capable of being used as furniture; the test is whether they are ordinarily so used and can be accepted as such according to the general or popular notion of what furniture is. Sales tax is a liability which affects the mercantile community and the consumer public. The list of items mentioned in the notification must be construed according to the understanding popular in that community and section of the people. To impose a technical or artificial meaning will result in defeating or stultifying the intention behind the provision. It may be that the bedside lockers, dressing carriages, instrument trollies, instrument tables, instrument cabinets, revolving stools and self-propelling chairs can be put to use as lockers, tables, cabinets, stools and chairs in the home. But the question is whether they can be said to be articles of furniture in the popular or general sense. The contention of the revenue is not that in the generally accepted sense they are articles of furniture. The contention is that their design and equipment do not preclude them from being used as furniture. It is one thing to say that although they cannot be generally described as furniture they can be used as such. That points to a compulsive use, a role for which they were never originally intended. That is not the same thing as saying that they are articles which in the popular or general sense are accepted as furniture."

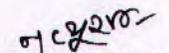
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13. After going through these judgment of the Hon'ble RTT/High Courts and also perusing the relevant product catalogue and common user test of the items in question, we arrive at a considered view that the following items shall be considered as hospital equipments:- (i) Labour table, (ii) Examination table, (iii) Railing (iv) Cylinder Trolley, (v) Foot step, (vi) Drip stand/I.V. stand, (vii) Dressing trolley, (viii) Monitor trolley, (ix) Mayos Trolley, (x) Back rest, and (xi) Linen trolley, as all the items are used in hospitals for treatment, medical examination or patient related services, therefore, these cannot be held to be 'furniture' in a true sense. In common parlance sense too, these items would be categorized as hospital equipments only and the rate of tax on these items would be as per Entry 86 of Schedule-IV. However, the lone entry which in our considered view may not fall under the category of hospital equipments is 'Foam/mattresses', because these items cannot fall into the category of the 'equipments' as such, therefore, it would not be covered under the said entry and shall be taxable at residual rate under the Schedule-V.
14. Resultantly, the impugned appellate orders deserve to be confirmed to the extent of setting aside of the additional levy on the items except for the Foam/mattresses.
15. Accordingly, the appeals filed by the Revenue are partly accepted.
16. Order pronounced.


16.8.2018

(OMKAR SINGH ASHIYA)
Member


(NATHU RAM)
Member