

Rajasthan Tax Board, Ajmer

1. Appeal No. 2492/2016/Jaipur
2. Appeal No. 2493/2016/Jaipur

Indus Towers Ltd.,
D-34, Subhash Marg,
C-Scheme, Jaipur

...Appellant

VERSUS

Assistant Commissioner,
Anti-Evasion, Zone-III,
Jaipur

...Respondent

D.B.

SHRI K.L. JAIN, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Gajendra Maheshwari, Advocate

for Appellant

Shri Anil Pokharna,
Dy. Govt. Advocate

for Revenue

Dated : 04/10/2018

JUDGMENT

1. These appeals have been filed by the appellant under section 24 of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 (hereinafter called the "Act"), against order of the Appellate Authority-II, Commercial Taxes Department, Jaipur (hereinafter called the "appellate authority") dated 30.11.2016. The appellate authority has rejected the appeals filed against orders of the Assistant Commissioner, Anti-evasion, Zone-II, Jaipur (hereinafter called the 'Assessing Authority' or the 'AO') on the issue of tax and interest but set aside the penalty levied under section 15(2) of the Act. The details of the appellate and the assessment orders and disputed amount therein, is as under:-

Appeal No.	Appellate Authority's Order Details		Assessing Authority's Order Details			
	Appeal No.	Date of Order	Assessment Year	Date of Order	Entry Tax (Rs.)	Interest (Rs.)
2492/2016	282/Appeal-II/ET/JP/2016-17	30.11.2016	2013-14	05.08.2016	21306043	7244052
2493/2016	283/Appeal-II/ET/JP/2016-17	30.11.2016	2014-15	05.08.2016	55973175	12314102

31

2. Since a common issue of interpretation of a taxing entry / classification of some goods is involved in all these appeals, therefore, the same are disposed off by a common order. The copy of the judgment be placed on each relevant appeal file.
3. Brief facts leading to the present appeals are that the appellant company is engaged in the business of providing "telecommunication infrastructure support services" to various telecom operators and has set up various telecommunication infrastructure support sites in the State of Rajasthan. For providing these telecommunication infrastructure services, the appellant has imported various goods in the State from other States and used or consumed the same for carrying out its activities. The regular assessments for the years 2013-14 and 2014-15 were finalized by the Regular Assessing Authority having jurisdiction at that time. Later, the Anti-Evasion Authorities surveyed the business premises of the appellant on 03.08.2015 and after the ensuing enquiries, found that the appellant has brought into the local area some electrical goods which were used for setting up of the telecommunication towers within the State of Rajasthan on which no entry tax was paid. Accordingly, a case was made out under section 15 of the Act and the AO after issuing notice and taking reply of the appellant, did not agree with contentions of the applicant and termed the goods in question as 'electrical goods' and levied tax, interest and penalty on the taxable purchase price of the goods.
4. Being aggrieved of the assessment orders, the respondents preferred appeals under section 23 of the Act before the appellate authority, who vide his common order dated 30.11.2016, has partly accepted the appeals, in which the levy of tax and interest was maintained but the penalty was set



aside. The appellant being aggrieved of the appellate order has preferred these appeals challenging the levy of tax and interest on the turnover in question.

5. At the outset, the learned Advocate for the appellant made a preliminary objection that the regular assessments under section 12 of the Act were already finalized by the Regular Assessing Authority in which no tax was levied on the items in question, therefore, the Anti-Evasion Authorities or the AO in particular cannot initiate proceeding under section 15 of the Act terming the turnover in question as 'escaped turnover'. He stressed upon the language of the section 15 wherein the words 'for reasons to believe' have been mentioned and in the present case, the AO has not given any reason for initiating the proceedings under section 15, therefore, he argues that the assessments could not have been reopened in the first place. He referred several judgments to emphasize his point.
6. The learned advocate for the appellant further submitted that the goods in question, held by the AO to be 'electrical goods', are in-fact not electrical goods, therefore, the AO was wrong to determine these goods under the category of electrical goods and levy tax accordingly. He further submits that the appellant has brought into the local area the following goods namely- **Battery, Cable, DC-DC Converter, Rectifier Modules and Switch Mode Power Supply (SMPS)**, which cannot be termed as electrical goods, therefore, no liability whatsoever can be thrust upon the appellant. He further emphasized that one of the goods in question i.e. 'Battery' can never be termed as electrical goods because by the 'user test' as well as the 'common parlance test' the battery cannot be termed as an electrical goods.
7. Learned Deputy Government Advocate appearing for the Revenue submits that the goods in question squarely falls under

31

31

the category of electrical goods, therefore, the AO has rightly levied the tax and interest on the purchase price of the goods in question and that the appellate authority has rightly upheld the levy of tax and interest. He therefore, requests to uphold the appellate order wherein the tax and interest has been confirmed.

8. In the grounds of appeal, though the appellant has agitated about the constitutional validity of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999, but as the Constitution Bench of the Hon'ble Supreme Court in the matter of **Jindal Stainless Ltd. & Anr. Vs. State of Haryana & Ors. AIR 2016 SC 5617: (2017) 12 SCC 1**, has upheld the validity of the Act, therefore, the issue is no more *res integra* hence liable to be rejected. Moreover, the appellant does not want to press on this issue, therefore, this ground of Appeal is not entertained and stands rejected.
9. We have carefully gone through the averments made on behalf of the appellant and the respondents and perused the relevant record as well.
10. So as to decide the preliminary objection first, as raised by the appellant, it is important to look at the language used in section 15 of the Act and then to decide if the stipulations of section 15 have been fulfilled or not. Section 15 of the Act is reproduced hereunder:

"15 Payment of tax for entry of goods escaping assessment.—

- (1) *If the assessing authority has reasons to believe that the whole or any part of the turnover of a dealer or the purchase value of taxable goods brought or caused to be brought into a local area by a dealer whether on his own account or on account of his principal or any other person or who has taken delivery or is entitled to take delivery of such goods on its entry into local area in respect of any period has escaped assessment to tax or has been under assessed or has been assessed at*



a rate lower than the rate at which it is assessable under this Act or any deduction or exemption have been wrongly claimed or allowed in respect thereof, the assessing authority may, notwithstanding the fact that whole or part of such escaped turnover or purchase value of taxable goods, as the case may be, was already before the said authority at the time of original assessment or re-assessment, but subject to the provisions of sub-section (3) at any time within a period of five years from the expiry of the year to which the tax relates, issue notice and proceed to assess or re-assess to the best of its judgment, the tax payable by a dealer in respect of such turnover or purchase value of such goods, as the case may be, and after making such enquiry as it may consider necessary, shall complete the assessment within eight years from the end of the relevant year.

(2)

(3)"

11. It is pertinent to note that section 12 provides for 'Returns and Assessment' and as per stipulation of sub-section (3), the dealer is deemed to have been assessed on the basis of the return furnished by him, meaning thereby that the assessment u/s 12(3) are essentially the 'Deemed Assessments' and the AO only scrutinizes the returns for any error. After conducting the survey, the AE officer who conducted the survey and follow up inquires, in order sheet dated 10.12.2015 and 22.4.2016, has categorically mentioned his "reasons to believe" as to why some of the goods could not undergo the tax net in the assessment orders for this year 2013-14 and 2014-15. The order sheet dated 10.12.2015 says the following:-

"10.12.15 पत्रावली पेश। व्यवहारी द्वारा प्रस्तुत दस्तावेजों, कर निर्धारण आदेशों (वर्ष 2013-14 व 2014-15) का अवलोकन करने पर प्रथम दृष्टया निम्न अनियमितताएं स्पष्ट होती हैं जो निम्न प्रकार हैं:-

व्यवहारी फर्म द्वारा वास्ते कर निर्धारण (समक्ष स.आ. वकर्स कान्ट्रेक्ट एण्ड लीजिंग टैक्स, वा. कर संभाग-III जयपुर) प्रस्तुत आयात (अन्तरराज्यीय) माल की सूची



में अग्रवर्णित उत्पादों को निर्धारित कर दर से प्रवेश
कर योग्य होना नहीं दर्शाया है:-

वर्णन हेतु पत्रावली आइन्दा पेश हो।"

In continuation of the above, the order sheet dated 22.04.2016
gets concluded as under:-

"22.04.16 उक्त प्रवेश कर योग्य संव्यवहार पर देय प्रवेश कर
का व्यवहारी द्वारा न भुगतान किया गया है न ही
अपनी विवरणी/आयात माल की सूची में दायित्व
घोषित किया है।

अतः उक्त संव्यवहार पर करापवंचन का अभियोग
स्थापित होता है एवं धारा राजस्थान स्थानीय क्षेत्रों में
माल के प्रवेश पर कर अधिनियम, 1999 की धारा 15
एवं 34A के अन्तर्गत कार्यवाही प्रस्तावित है।"

So, after going through the proceeding of the enquiry officer, it
is held that the competent officer has narrated the sufficient
'reasons to believe' to initiate action u/s 15 of the Act,
therefore, the preliminary objection as raised by the appellant
does not hold any ground and the same is over-ruled.

12. Now, coming to the merits of the case, firstly, we have to look
into the issue if the goods in question i.e. Battery, Cable, DC-DC
Converter, Rectifier Modules and Switch Mode Power Supply
(SMPS) can in-fact be termed as the electrical goods and for this
purpose, the relevant entry under the notifications dated
09.03.2011 and 14.07.2014 and some product literature, would
have to be perused which are as under :

Entry 20 of the Tax Rate notification dated 09.03.2011
(remained effective from 09.03.2011 to 13.07.2014)

S.No.	Description of goods	Rate of tax(%)
20.	All kind of electrical and electronic goods including electronic meters, fax machines, SIM cards, Smart cards, and parts and accessories thereof.	4%

31

31

Entry 19 of the Tax Rate notification dated 14.07.2014 (effective from 14.07.2014 to 08.03.2015)

S.No.	Description of goods	Rate of tax(%)
19	All kind of electrical and electronic goods including electronic meters, FAX machines, SIM cards, Smart cards, radio sets and radio gramophones, V.C.R., V.C.P., tape-recorders, transistor sets and parts and accessories thereof.	14%

* Rate of Tax between 09.03.2015 to 31.03.2015 was 4%.

13. This entry appears to be wide enough as it includes within its ambit the "all kind of electrical goods". Though no specific definition has been given of the term 'Electrical Goods' under the Act, but to understand this term, some of the definitions and some relevant judgments wherein this term has been used or discussed, would be looked into. **The Law Lexicon** (Justice T.P. Mukherjee 4th Ed, 1989 pg.574) defines Electrical Goods as 'such articles the use of which cannot be had except with the application of electrical energy.' It must be kept in mind that an electronic device can be an electrical device but an electrical device cannot be an electronic device.
14. The Madras High Court in the case of **William Jacks and Co. Ltd.** (AIR 1955 Mad 656) held that such articles, the use of which cannot be had except with the application of electric energy, can be termed "electrical goods" or appliances. In the case of **Best and Co. (P.) Ltd. [1984] 57 STC 174** applying the principle that was laid down in the case of William Jacks (AIR 1955 Mad 656) the Madras High Court held that mono block pump set, being a single block of machinery and not capable of being



operated excepting with the use of electricity as motive power, is electrical goods.

15. The Bombay High Court in the case of **Hind Rectifiers Ltd. [1981] 47 STC 303 (Bom)** held that the consumption of electricity was not a decisive guideline for the classification of any goods as electrical goods. A more accurate criterion for determining whether any goods can be classified as electrical goods would be to see whether the purpose of the goods has any direct connection with the utilisation, consumption, transmission or production of electricity. Goods which have such a nexus would fall in the category of electrical goods. The Division Bench of the Punjab and Haryana High Court in the case of **Karnal Machinery Store [1973] 31 STC 03 (P&H)**, was concerned with the question whether the monoblock pumping sets, the main purpose of which is to pump water, can be classified as electrical goods or not. The Punjab and Haryana High Court held that merely because in the case of one tool, the motivation was by electrical energy, it would not fall under the heading "electrical goods". It was held that it is the intrinsic nature and the purpose for which a tool is used which would determine its nature.
16. The Delhi High Court in the case of **Envoys India (P.) Ltd. [1981] 48 STC 443 (Delhi)** held that though the primary test for deciding whether a particular type of goods are "electrical goods" or not, is whether the goods can be operated otherwise than by electricity. But, in addition, the goods should also be intrinsically in the nature of "electrical goods" as understood by commercial men. In the case of **BPL Ltd. v. State of Andhra Pradesh [2001] 121 STC 450 (SC)**, the Supreme Court while drawing the distinction between electronic goods and electrical goods held that all electronic goods are not electrical goods. The fact that the electronic goods manufactured by the assessee cannot be used without the aid of electricity, is not only the

criterion to determine whether those goods can be treated as electrical goods.

17. Apart from the abovementioned judgments, the Hon'ble Supreme Court in various judgments has held that where a particular commodity or an item is not defined under a taxing statute, it is appropriate to apply the 'user test' as well as the 'common parlance test'. In the case of **Mukesh Kumar Aggarwal & Co. Vs. State of Madhya Pradesh and Ors. [1988] 68 STC 324 (SC)** the Hon'ble Supreme Court has held as under:

"4. In a taxing statute words which are not technical expressions or words of art, but are words of everyday use, must be understood and given a meaning, not in their technical or scientific sense, but in a sense as understood in common parlance i.e. "that sense which people conversant with the subject matter with which the statute is dealing, would attribute to it". Such words must be understood in their 'popular sense'. The particular terms used by the legislature in the denomination of articles are to be understood according to the common, commercial understanding of those terms used and not in their scientific and technical sense "for the legislature does not suppose our merchants to be naturalists or geologists or botanists".

18. Now, we delve into the functional meaning of the items in question i.e. (i) Battery, (ii) Cable, (iii) DC-DC Converter, (iv) Rectifier Modules and (v) Switch Mode Power Supply (SMPS) as sourced from various literature available:

(i) Battery:

A battery is a device consisting of one or more electrochemical cells with external connections provided to power electrical devices such as flashlights, smartphones, and electric cars. When a battery is supplying electric power, its positive terminal is the cathode and its negative terminal is the anode. The terminal marked negative is the source of electrons that when connected to an external circuit will flow and deliver energy to an external device. When a battery is connected to an external

circuit, electrolytes are able to move as ions within, allowing the chemical reactions to be completed at the separate terminals and so deliver energy to the external circuit. It is the movement of those ions within the battery which allows current to flow out of the battery to perform work.

On functional side of the usage of batteries, we find that such batteries, particularly the storage batteries as used by the appellant, are used for stand-by power in automobiles, switchgears, telecommunication or large uninterruptible power supply (UPS). So, by applying the 'user test / common parlance test', looking into the exhaustive definition of the item and the various judicial pronouncements, we arrive at a considered view that "battery" shall not fall under the category of 'electrical goods', hence, not taxable under the Act.

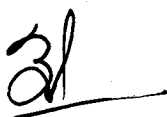
(ii) Cable

Electrical cables are used to connect two or more devices, enabling the transfer of electrical signals or power from one device to the other. Cables are used for a wide range of purposes. Power cables are used for bulk transmission of alternating and direct current power, especially using high-voltage cable. Electrical cables are extensively used in building wiring for lighting, power and control circuits permanently installed in buildings.

Since the cable is used for transmission of electrical energy from one end to another or from the source to another end, therefore, it qualifies to be termed as 'electrical goods'.

(iii) DC-DC Converter

A 'DC-DC converter' is an electronic circuit or electromechanical device that converts a source of direct current (DC) from one



voltage level to another. It is a type of electric power converter. Power levels range from very low (small batteries) to very high (high-voltage power transmission).

DC to DC converters are used in portable electronic devices such as cellular phones and laptop computers, which are supplied with power from batteries primarily. Such electronic devices often contain several sub-circuits, each with its own voltage level requirement different from that supplied by the battery or an external supply (sometimes higher or lower than the supply voltage). Additionally, the battery voltage declines as its stored energy is drained. Switched DC to DC converters offer a method to increase voltage from a partially lowered battery voltage thereby saving space instead of using multiple batteries to accomplish the same thing.

Since this device converts a source of direct current (DC) from one voltage level to another, therefore, this would be termed as the electrical goods.

(iv) Rectifier Modules

A rectifier is an electrical device that converts alternating current (AC), which periodically reverses direction, to direct current (DC), which flows in only one direction. The process is known as rectification, since it "straightens" the direction of current.

Because of the alternating nature of the input AC sine wave, the process of rectification alone produces a DC current that, though unidirectional, consists of pulses of current. Many applications of rectifiers, such as power supplies for radio, television and computer equipment, require a steady constant DC current (as would be produced by a battery). In these applications the output of the rectifier is smoothed by an



electronic filter, which may be a capacitor, choke, or set of capacitors, chokes and resistors, possibly followed by a voltage regulator to produce a steady current. More complex circuitry that performs the opposite function, converting DC to AC, is called an inverter.

Since this device converts alternating current (AC) to direct current (DC), therefore, this item too would fall under the category of 'electrical goods'.

(v) Switch Mode Power Supply (SMPS)


A switched-mode power supply (SMPS) is an electronic circuit that converts power using switching devices that are turned on and off at high frequencies, and storage components such as inductors or capacitors to supply power when the switching device is in its non-conduction state.

Switching power supplies have high efficiency and are widely used in a variety of electronic equipment, including computers and other sensitive equipment requiring stable and efficient power supply. Advantages of switched-mode power supplies are- Higher efficiency of 68% to 90%, Regulated and reliable outputs regardless of variations in input supply voltage, Small size and lighter, Flexible technology and high power density. Switched-mode power supplies are used to power a wide variety of equipment such as computers, sensitive electronics, battery-operated devices and other equipment requiring high efficiency.

Since this SMPS converts power using switching devices when the switching device is in non-conduction state. So, this device too qualifies to fall under the category of 'electrical goods'.



19. Looking into the usage, functional test and common parlance test, these four items namely- Cable, DC-DC Converter, Rectifier Modules and Switch Mode Power Supply (SMPS), are found to be electrical goods as these are, in one way or other, are directly related to transmission, consumption or utilization of electrical energy, therefore, these are categorically held to be electrical goods. Since the electrical goods brought into the local areas attracts Entry Tax, therefore, these items would be taxable accordingly.
20. As discussed above, we are of the considered view that out of the five items agitated before us for consideration, the battery shall not fall under the category of 'electrical goods' but other items namely (i) Cable, (ii) DC-DC Converter, (iii) Rectifier Modules and (iv) Switch Mode Power Supply (SMPS) would fall under the category of 'Electrical Goods' exigible to Entry Tax. So, the levy of tax and interest on 'battery' is set aside and that on the remaining items is confirmed.
21. Accordingly, the appellate order is partly set aside and partly confirmed to the extent mentioned hereinabove. So, both the Appeals are partly accepted.
22. Judgment pronounced.


04.10.2018
(Omkar Singh Ashiya)
Member


(K.L. Jain)
Member