

**Rajasthan Tax Board, Ajmer**

Appeal No. 1400/2014/Alwar  
Appeal No. 1401/2014/Alwar  
Appeal No. 1402/2014/Alwar  
Appeal No. 1403/2014/Alwar  
Appeal No. 1404/2014/Alwar  
Appeal No. 1405/2014/Alwar  
Appeal No. 1406/2014/Alwar  
Appeal No. 1407/2014/Alwar  
Appeal No. 1408/2014/Alwar  
Appeal No. 1409/2014/Alwar

M/s Venelac Electromech  
Industries Pvt. Ltd.  
G1-393, RIICO Industrial Area,  
Bhiwadi, Alwar

...Appellant

**VERSUS**

Commercial Taxes Officer,  
Anti-Evasion, Bhiwadi

.....Respondent

Appeal No. 1914/2014/Alwar  
Appeal No. 1915/2014/Alwar  
Appeal No. 1916/2014/Alwar  
Appeal No. 1917/2014/Alwar  
Appeal No. 1918/2014/Alwar  
Appeal No. 1919/2014/Alwar  
Appeal No. 1920/2014/Alwar  
Appeal No. 1921/2014/Alwar  
Appeal No. 1922/2014/Alwar  
Appeal No. 1923/2014/Alwar

Commercial Taxes Officer,  
Anti-Evasion, Bhiwadi

...Appellant

**VERSUS**

M/s Venelac Electromech  
Industries Pvt. Ltd.  
G1-393, RIICO Industrial Area,  
Bhiwadi, Alwar

.....Respondent

**D.B.**

**SHRI MADAN LAL MALVIYA, MEMBER**  
**SHRI OMKAR SINGH ASHIYA, MEMBER**

Present :

Shri Vinay Kumar Goyal,  
Advocate

for Appellant

Shri Ramkaran Singh,  
Dy. Govt. Advocate

for Respondent





Dated : 02/02/2018

**JUDGMENT**

1. Appeal nos. 1400 to 1409/2014/Alwar have been filed by the appellant dealer (hereinafter referred as the "assessee") against order of the Appellate Authority, Commercial Taxes Department, Alwar (hereinafter called the "appellate authority") who vide his order dated 29.04.2014 upheld the levy of tax and interest but set aside the penalty as levied by the Commercial Taxes Officer, Anti-Evasion, Bhiwadi (hereinafter called the "assessing officer" or the "AO") vide his order dated 16.12.2013 passed under Section 25, 55 and 61 of the Rajasthan Value Added Tax Act, 2003 (hereinafter called the "Act").

2. Similarly, the appeal nos. 1914 to 1923/2014/Alwar have been filed by the Revenue (hereinafter called the "Revenue"), against order of the Appellate Authority, Commercial Taxes Department, Alwar (hereinafter called the "appellate authority") who vide his orders dated 29.04.2014 set aside the penalty as levied by the Commercial Taxes Officer, Anti-Evasion, Bhiwadi (hereinafter called the "assessing officer" or "AO") vide his order dated 16.12.2013 passed under Section 25, 55 and 61 of the Rajasthan Value Added Tax Act, 2003 (hereinafter called the "Act") levied tax, interest and penalty against the respondent dealer (hereinafter referred as the "dealer").

3. For present appeal nos. 1400 to 1409/2014/Alwar, as filed by the appellant assessee, the details of the appellate orders as well as that of the assessing authority, are given below:

Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Authority's order Details		
		Appeal No.	order dated	order dated	disputed tax	disputed interest
1400/2014	2008-09	126/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	77597	49662
1401/2014	2009-10	127/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	151884	88093
1402/2014	2010-11	128/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	132131	60780



**Appeal No. 1400 to 1409/2014/Alwar**  
**Appeal No. 1914 to 1923/2014/Alwar**

1403/2014	2010-11	129/CST/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	8948	4116
1404/2014	2011-12	130/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	210844	71687
1405/2014	2011-12	131/CST/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	2180	741
1406/2014	2012-13	132/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	270739	59563
1407/2014	2012-13	133/CST/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	38348	8437
1408/2014	2013-14	134/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	75100	4043
1409/2014	2013-14	135/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	92791	5944

4. For the appeals filed by the Revenue being appeal nos. 1914 to 1923/2014/Alwar, the details of the appellate orders as well as that of the assessing authority, are given below:

Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Authority's order Details	
		Appeal No.	order dated	order dated	penalty involved
1914/2014	2008-09	126/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	282453
1915/2014	2009-10	127/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	303768
1916/2014	2010-11	128/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	264262
1917/2014	2010-11	129/CST/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	17896
1918/2014	2011-12	130/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	421688
1919/2014	2011-12	131/ CST /2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	4360
1920/2014	2012-13	132/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	541478
1921/2014	2012-13	133/ CST /2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	76695
1922/2014	2013-14	134/RVAT/2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	150200
1923/2014	2013-14	135/ CST /2013-14/App.Auth./Alwar	29.04.2014	16.12.2013	185582

5. Brief facts leading to the present appeals are that the assessee is engaged in manufacturing of 'Cable Jointing Kit' in the State and makes the sale within the State as well as in the course of inter-state trade and commerce. The Anti-evasion authorities surveyed the

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business place of the dealer on 29.08.2013 and found that the goods manufactured by him i.e. 'Cable Jointing Kit' are though taxable @ 12.5% or 14% (as applicable in the relevant period) but the assessee charged and deposited tax @ 4% or 5% (as the rate applicable for Schedule-IV items). The AO issued notice to the assessee that goods manufactured by him i.e. 'Cable Jointing Kit' are not specified under Schedule-IV of the Act, so, it is liable to be taxed under Schedule-VI at residuary rate of 12.5% / 14% (as applicable during the relevant period) but the dealer deposited tax on these items @ 4% / 5% (prevailing rate of Schedule-IV during the relevant period), therefore, tax, interest and penalty was proposed to be levied. The dealer submitted his detailed reply and after hearing him, the AO did not accept his reply and found it to be a case of evasion, hence, levied difference tax, interest and penalty as mentioned in the above tables.

6. Aggrieved of this imposition the assessee preferred appeals before the Appellate Authority who upheld the levy of tax and interest but set aside the penalty by order dated 29.04.2014.

7. The learned counsel appearing for the assessee submitted that the regular assessing authorities, over the years, assessed him and levied tax @ 4% on 'Cable Jointing Kit', so change of opinion is not permissible afterwards. He further submitted that as per the prevalent trade practice, these items are considered as 'Cable' and accordingly should be taxed @ 4% or 5% as the rate prevailed for Schedule-IV items, and that the AO should have examined the trade practice as well as usage by taking expert opinion from the trade experts. It was also argued that the "Cable Jointing Kit" becomes part of the cable itself after jointing two cables, and that after use or absorption of the 'Cable Jointing Kit' no separate commodity remains in existence, therefore, it should be considered as 'Cable' only. He further referred a judgment of the Hon'ble Andhra Pradesh High Court i.e. XL Telecom Limited, Hyderabad V/s Superintendent of Central Excise: (1999)105 ELT 263 AP, wherein, according to him, it has been held that placing different articles in the kit does not amount to manufacture and that once the activity of placing the articles and the kit does not amount to manufacture, provisions of the Central Excise Act were not applicable and levy of excise duty on the production and manufacture of such

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goods, was not attracted. Apart from the abovementioned judgement, he also referred the following judgments:

1. Ecof Detergents (P) Ltd. V/s CTO (2004) 138 STC 367 (Mad)
2. OEN Connectors Ltd. V/s State of Kerala (1992) 87 STC 335

In the light of the above arguments, he requested to accept appeals of the dealers and reject those of the Revenue.

8. The learned Deputy Government Advocate appearing for the revenue argued that the goods in question i.e. 'Cable Jointing Kit' cannot fall into entry 68 or 68A of Schedule-IV appended to the Act. He referred entry 24 and 25 of Schedule-IV (Part-A) which pertain to the I.T. Product where the 'joining kits and joining material thereof' has specifically been included with names of the main items i.e. optical fiber cables, networking cables etc. Had there been any intention of the Government to levy tax on 'Cable Jointing Kit' used for jointing / joining the power cables at lower rate, then the same words as used in entry 24 and 25 could have been used in entry 68 and 68A. He further submitted that in earlier years the assessments of the dealer were finalized under the self-assessment scheme and accordingly the previous AOs finalized assessments at lower rate of 4% or 5% (as prevalent for Schedule-IV goods), therefore, the argument of the learned advocate of assessee that on change of opinion higher rate of tax should not be levied, holds no ground. It was also submitted as the dealer has deliberately paid the tax at lower rate, therefore, imposition of penalty is fully justified. In light of these arguments, he requested to disallow appeals of the dealer and accept appeals of the Revenue.

9. Heard learned counsels for both the parties and perused the record.

10. Before going into the controversy of rate of tax on the 'Cable Jointing Kit', it would be appropriate to understand what this commodity is and what its usage are.



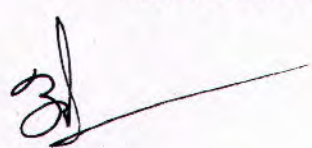


11. On perusal of technical literature relating to 'Cable jointing kit', it has been found that the said item is used essentially in jointing the power cables, especially of high voltage transmission cables. The clientele of the assessee includes various State Electricity Boards or DISCOMs, MES, CPWD, Railways, Power Generation companies and various types of industrial units. So, after having a look at usage of the items and users *per se*, it can safely be concluded that 'cable jointing kit' is used for jointing power cables, especially of the High Voltage Tensile Power transmission cables.

12. Now, it would be appropriate to study the judgments with due respect, of the various Hon'ble High Courts as referred by the appellant dealer:

(i) XL Telecom's case [(1999)105 ELT 263 (AP)]: The issue involved in this case related to as to whether placing different articles into a kit for joining cables would tantamount to the activity of manufacture or not, and the Hon'ble AP High Court held it not to be a 'manufacturing' activity. But, in the instant case the issue is not comparable with that of the referred case, therefore, the same can't be applied here;

(ii) Ecof Detergents' case [138 STC 367 (Mad)] : The issue under litigation was as to whether 'detergent powder' should fall under the entry of 'soap' or would fall under the residuary rate entry. The Hon'ble Madras High Court laid much stress that how the common man would call the product "Sabena" powder containing Alkyl Benzene Sulphonic Acid. Hon'ble Court was of the view that as the "word detergent is itself a term of relatively recent origin" and that "it cannot be said that the word "detergent" is a part of the common man's vocabulary. The products used for cleansing are sought by the average consumer by their brand name or by specifying the purpose for which the goods are required." In the present case, there is no matter either of the good being of recent origin or





any other common parlance name is prevalent for the term 'Cable Jointing Kit', therefore, this judgment does not apply in the instant matter;

(iii) In OEN Connectors' case [ (1992) 87 STC 335], the issue involved was as to whether the 'multipin connector' was electrical goods or an instrument used in telecommunication systems, which was taxable under higher tax rate of 15%. Further the Hon'ble Court held, and on which emphasis was given by the appellant dealer in the instant case, that "In cases of this type, one would expect at least a few persons connected in the trade to be examined with reference to the particular item, which is sought to be taxed". But in the present case there is no ambiguity whatsoever about use of this goods in question and it does not have dual use as perceived by the authorities there in the OEN connectors' case. Therefore, this case too, does not apply in the present matter.

13. As discussed above, the facts and circumstances of the above referred cases being different from the present case, so the same cannot be applied here.

14. Now, it is necessary to have a look at the entries as appearing in Schedule-IV appended to the Act. At serial no. 68 and 68A of this Schedule the entries are as follows:

68	All kinds of electrical cables including XLPE cables	5
68A	Jelly filled cables, optical fibre cables	5

Then, to peruse the entry 24 and 25 of Part-A of Schedule-IV, which are as follows: -

24	Optical fibre cables, networking cables of different types such as Flat cables, CAT 3 cables, CAT 5 cables, CAT 6 cables, Unshielded Twisted Pair (UTP) cables, <u>joining kits and joining materials thereof</u>	5
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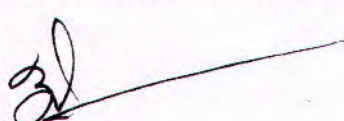
25	Optical fibre and optical fibre bundles and <u>joining kits and joining materials thereof</u>	5
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It is worth mentioning here that rate of tax on Schedule-IV goods was 4% till 8.3.2010, thereafter it was 5% from 9.3.2010 to 1.2.20016. Likewise, the rate of tax on Schedule-V goods was 12% till 7.7.2009 and thereafter it was 12.5% from 08.07.2009 to 13.07.2014.

15. So, while having a closer look at the entries 68 and 68A as well as entries 24 and 25 as mentioned above, there is no doubt that entries 24 and 25 pertain to IT goods as heading of the Part-A of Schedule-IV speaks itself, i.e. "GOODS UNDER CATEGORY OF IT PRODUCTS". Since the goods under our consideration i.e. 'Cable Jointing kit' essentially relate to jointing electrical cables, therefore, it cannot fall under these two entries 24 or 25, therefore, applicability of these two entries is ruled out.

16. Secondly, when we consider the entries 68 & 68A, these speak of cables only. Had there been any intention of the Government to include "jointing kits" into ambit of these entries, then the wordings of these entries too could have been akin to the entry no. 24 and 25, viz "-----, **joining kits and joining materials thereof**", as specified in these entries. So, in our considered view the 'cable jointing kits' used for electrical cables cannot fall into entries 68 or 68A of Schedule-IV, hence would be taxable under Schedule-V @ 12% / 12.5% /14% or 14.5%, as per the rate prevalent during the appropriate periods. Therefore, on this count appellate order is confirmed and appeals of the appellant assessee are disallowed.

17. Now we must consider the second issue which has been agitated by the Revenue, i.e. setting aside of penalty by the appellate authority. In various judicial pronouncements it has categorically been held that penalty is not leviable where interpretational issues are there and the goods in question are entered in the books of account of the





dealer. In this regard, following judicial pronouncements are useful to be quoted: -

1. Sree Krishna Electricals V/s State of Tamilnadu [2009].23 VST 249 (SC)

*"So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities includes these items in the dealers' turnover disallowing the exemption, penalty cannot be imposed."*

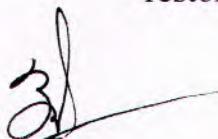
2. Lord Venketshwara Caterers V/s CTO [ (2007) 19 Tax Update 85 (Raj) ]

*"the position of law is settled that penalty under Section 65 of the Act cannot be imposed on the assessee unless the revenue establishes that there is deliberateness on the part of the assessee or conscious concealment of taxable turnover with the purpose to avoid or evade the tax and such penalty cannot be imposed merely because the contention of the assessee that particular sale is not taxable is rejected or explanation furnished by him is not found to be acceptable by the revenue."*

*"It is also not in dispute that all the transactions of sale on the basis of which taxable turnover by the assessee was computed by the assessee, were duly recorded in the books of accounts maintained by the assessee in regular course of business and on the basis of such books of accounts only the assessing authority framed the assessment and imposed the tax. It is not a case of concealment of turnover or filing of inaccurate particulars as is envisaged under Section 65 of the Act."*

*"It is not even a case of the revenue that these transactions were not recorded in the books of accounts maintained by the assessee. It is also not the case of the revenue that he filed a return claiming the said turnover to be exempt from the sale and contested this position."*

In light of these observations the Hon'ble Rajasthan High Court allowed revision petitions and set aside the impugned order of the Tax Board dated October 26, 2005 and also those passed by the assessing authority wherein the penalty was imposed under section 65 of the Act upon the petitioner-assessee and order of the Deputy Commissioner (Appeals) in favour of the assessee was restored.





18. Since, this fact is not in dispute that the transactions were duly recorded in books of accounts of the assessee, therefore, considering these judicial pronouncements the imposition of penalty was unwarranted. Accordingly, the order of the appellate authority setting aside the penalty, is found to be just and proper. Therefore, on this issue too, the appellate order is confirmed and appeals of the Revenue are disallowed.

19. Accordingly, the impugned appellate orders are found to be just and proper, hence confirmed and the appeals filed by the assessee as well as the Revenue are rejected.

20. Order pronounced.



**(Omkar Singh Ashiya)**  
**Member**



**(Madan Lal Malviya)**  
**Member**