

## Rajasthan Tax Board, Ajmer

Commercial Taxes Officer,  
Circle-A, Bikaner ..Appellant

**VERSUS**

M/s Tolaram & Sons,  
Bikaner ..Respondent

1. Appeal No. 1748/2011/Bikaner

M/s Tolaram & Sons,  
Bikaner ..Appellant

**VERSUS**

Assistant Commissioner / CTO  
Circle-A, Bikaner ..Respondent

2. Appeal No. 164/2012/Bikaner

3. Appeal No. 436/2013/Bikaner

4. Appeal No. 2003/2014/Bikaner

5. Appeal No. 2004/2014/Bikaner

M/s Veer Singh Shanti Lal,  
Daga Ki Pirole, Bikaner ..Appellant

**VERSUS**

Asstt. Commercial Taxes Officer,  
Ward-VI, Circle-A, Bikaner ..Respondent

6. Appeal No. 1266/2014/Bikaner

7. Appeal No. 1267/2014/Bikaner

8. Appeal No. 1268/2014/Bikaner

9. Appeal No. 1269/2014/Bikaner

10. Appeal No. 1310/2014/Bikaner

M/s Ramdev Agrawal,  
Gopeshwar Basti, Bikaner ..Appellant

**VERSUS**

Commercial Taxes Officer,  
Special Circle-A, Bikaner ..Respondent

11. Appeal No. 1270/2014/Bikaner

12. Appeal No. 1271/2014/Bikaner

M/s Shivsukha Sag Bhandar,  
Bada Bazar, Bikaner ..Appellant

**VERSUS**

Asstt. Commercial Taxes Officer,  
Ward-VI, Circle-A, Bikaner ..Respondent

13. Appeal No. 1272/2014/Bikaner

14. Appeal No. 1273/2014/Bikaner

15. Appeal No. 1274/2014/Bikaner

16. Appeal No. 1275/2014/Bikaner

17. Appeal No. 1276/2014/Bikaner

D.B.

SHRI V. SRINIVAS, CHAIRMAN

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri D. Kumar, Advocate

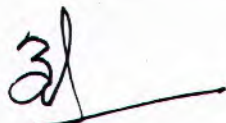
for Assessee in Appeal Nos. 1748/2011, 164/2012,  
436/2013, 2003/2014 & 2004/2014

Shri O.P. Dosaya, Advocate

for Assessee in Appeal Nos. 263/2008, 1266/2014,  
1267/2014, 1268/2014, 1269/2014, 1310/2014,  
1270/2014, 1271/2014, 1272/2014, 1273/2014,  
1274/2014, 1275/2014, 1276/2014 & 1841/2013

Shri Anil Pokharna,  
Deputy Govt. Advocate

for Revenue





Dated : 04/04/2018

**JUDGMENT**

1. Appeal no. 1748/2011/Bikaner has been filed by the Revenue and other appeals have been filed by various appellant dealers (hereinafter referred as the "assessee") against orders of the Deputy Commissioner (Appeals), Commercial Taxes Department, Bikaner (hereinafter called the "appellate authority"). In these cases, the assessing officers (hereinafter also referred as the "AO" or "AOs") while finalizing assessments under the Rajasthan Value Added Tax Act, 2003 (hereinafter referred as the "Act") have levied tax and interest on 'Saji' treating this to be a different commodity from 'Papad Khar'. In appeal no. 1748/2011, the appellate authority has set aside the order of the AO and accepted assessee's appeal against which the Revenue is in appeal before the Tax Board, and in the remaining appeals the assessing officers' orders have been confirmed and levy of tax and interest has been upheld by the appellate authority, so the assessee is in appeal in these remaining cases.

The details of the appellate orders as well AO's orders are as under:-

Sr. No.	Appeal No.	Appellate Authority's Appeal No.	Assessment Year	Tax (Rs.)	Interest (Rs.)
1.	1748/11	159/RVAT/BKN/10-11	2007-08	16,973	5,087
2.	164/12	119/RVAT/BKN/2011-12	2008-09	466125	130516
3.	436/13	318/RVAT/BKN/2012-13	2009-10	850787	297775
4.	2003/14	299/RVAT/BKN/2013-14	2010-11	14,86,807	4,90,643
5.	2004/14	300/CST/BKN/2013-14	2010-11	1,00,483	33,147
6.	1266/14	110/RVAT/BKN/2013-14	2007-08	7856	5106
7.	1267/14	111/RVAT/BKN/2013-14	2008-09	77260	40948
8.	1268/14	112/RVAT/BKN/2012-13	2009-10	53687	21840
9.	1269/14	148/RVAT/BKN/2013-14	2010-11	136350	39542
10.	1310/14	112/RVAT/BKN/13-14	2009-10	1064	436
11.	1270/14	153/RVAT/BKN/2013-14	2010-11	344926	100024
12.	1271/14	154/CST/BKN/2013-14	2010-11	344926	100024
13.	1272/14	124/RVAT/BKN/13-14	2007-08	34546	22455
14.	1273/14	125/RVAT/BKN/13-14	2008-09	11400	6042
15.	1274/14	126/CST/BKN/13-14	2008-09	11400	6042
16.	1275/14	127/RVAT/BKN/13-14	2009-10	6229	2554
17.	1276/14	128/RVAT/BKN/13-14	2010-11	48032	13930

2. Since all the appeals involve a common issue, therefore, the same are decided by a common order. Copy of the order be placed on each relevant appeal file.

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3. Brief facts leading to the present appeals are that the assesseees are dealing in 'Papad Khar' and 'Saji' and have treated both the commodities as one and the same and have not paid any tax on 'Saji' as the 'Papad Khar' was exempted from VAT vide notification no. F.12(15)/FD/Tax/2008-72 dated 25.02.2008 but made effective from 01.04.2006 by virtue of the notification no. F.12(15)FD/Tax/2008-84 dated 25.02.2008 whereby all the exemption notifications pertaining to the Schedule-I, issued post-implementation of VAT in the State were made effective from 01.04.2006. Since the 'Saji' as such was exempted from 09.03.2011 only, thus the assessing officers assessed the assesseees for the years 2007-08 to 2010-11, and levied tax on sale of 'Saji' and levied interest for non-deposit of tax. Aggrieved of the imposition, these assesseees filed appeals before the appellate authority, who rejected all these appeals and confirmed the levy of tax and interest in all the cases except for the case pertaining to the appeal no. 1748/2011/Bikaner wherein the appeal was accepted and levy of tax and interest was set aside.
4. Aggrieved of the respective appellate orders, the assesseees as well as the Revenue are in appeal before the Tax Board under section 83 of the Act.
5. Learned advocate appearing for the assesseees submits that the 'Papad Khar' and 'Saji' are one and the same commodity and that its usage is also identical. In some parts of the State, this item is called as 'Papad Khar' and in some other parts, it is called 'Saji'. So, for all practical purposes, this is one item only and since the State Government has specifically exempted 'Papad Khar' w.e.f. 01.04.2006, therefore, 'Saji' is also exempted from that date and no tax whatsoever is leviable on this commodity. He further laid emphasis on common parlance meaning and use of the commodity in question and referred the following judgments:
  1. Mahabir Flour Mills Vs CCT; (1987) 65 STC 296 (Patna)
  2. CST, UP Vs Rita Ice Cream; (1982) 49 STC 297 (All)
  3. Jain Exports (P.) Ltd. Vs UOI; (1988) 71 STC 173 (SC)
  4. N. Sooppy Haji Vs State of Kerala; (2009) 19 VST 427 (Ker)
  5. Bharat Vijay Mills Ltd. Vs CCT; (1992) 85 STC 2 (Kar)
6. Per contra, the learned Deputy Government Advocate appearing for the Revenue argues that the Rajasthan Tax Board while deciding appeal No. 2697/2011/BKN in the case of 'M/s





Ramdev Agrawal V/s Assistant Commissioner' vide order dated 08.05.2017, has held these two items to be different and the tax as levied on sale of 'Saji' has been upheld. Moreover, the Hon'ble Rajasthan High Court in the matter of 'M/s Meghraj Poonamchand V/s AC', order dated 06.07.2017 in S.B. Civil Revision No. 138-141/2017 (49 TUD 10) has confirmed the same view, therefore, he requests to reject all the appeals filed by the assesseees and to accept the appeal filed by the Revenue.

6. We have gone through the submissions of both the sides and perused relevant record. In all these appeals a very short question is involved as to whether the items 'Papad Khar' and 'Saji' are one and the same or two distinct items *per se* and that 'Papad Khar' has been exempted w.e.f. 01.04.2006, so should 'Saji' also stand exempted or not ?
7. The Hon'ble Rajasthan High Court in the case of M/s Meghraj Poonamchand (supra) has dealt with the issue at length and has held that 'Papad Khar' and 'Saji' are two different items and that 'Saji' remained taxable upto 08.03.2011. The relevant text of the judgment is reproduced hereunder:

*"10. Adverting to the facts of present case, it is to be noticed that treating 'papar khar' and 'saji' as two different commodities the same have been made taxable @ 4% by inclusion thereof in the Schedule IV of the VAT Act at S. Nos. 271 and 153 respectively. If any commodity is made taxable by specific inclusion thereof in the tax schedule, the question of treating it as exempted from tax does not arise unless by way of amendment of the Schedule, such entries are deleted and same are included in the Schedule I which deals with goods exempt from tax. It is true that Entry No.271 of Schedule IV prescribing rate of tax on 'papar khar' stands deleted w.e.f. 1.4.06 and 'papar khar' has been included at S.No. 37 in the Schedule I with retrospective effect i.e. from 1.4.06 and thus, the 'papar khar' shall be treated to be exempt from tax from the date of the commencement of the VAT Act. It is also not in dispute that the 'saji' included at S.No. 153 of Schedule IV also stands deleted vide notification No.2733 dated 9.3.11 and has been included in the entry at S.No. 123 in the Schedule I vide notification No.2729 dated 9.3.11 and thus, w.e.f. 9.3.11 'saji' also stands exempt from tax but during the period interregnum from 1.4.06 to 8.3.11, it remains taxable @ 4% in as much as, the notifications dated 9.3.11 have not been given retrospective effect, as in case of 'papar khar' which has been specifically deleted from Entry No.271 of Schedule IV and*

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included in the Entry No. 37 of Schedule I vide notifications dated 25.2.08 w.e.f. 1.4.06.

11. The contention sought to be raised on behalf of the petitioners that the notifications dated 9.3.11 are only clarificatory and the State Government intended to exempt 'saji' from tax keeping in view the fact that it is included in the 'papar khar' in common parlance is devoid of any merit. The action of the State Government in deleting the taxable commodity 'papar khar' from the Schedule IV and inclusion thereof in the Schedule I retrospectively, but not giving retrospective effect to the notifications issued deleting the commodity 'saji' from the Schedule IV and inclusion thereof in the Schedule I, by itself shows that 'saji' is intended to be kept taxable @ 4% during the intervening period from the date of commencement of the VAT Act till the date of issuance of the notification dated 9.3.11 i.e. for the period from 1.4.06 to 8.3.11. In the considered opinion of this court the notifications dated 9.3.11 issued by the State Government are quite unequivocal and therefore, there is no possibility of applying theory of intendment so as to treat the notifications issued in respect of the commodity 'saji' as clarificatory, presuming that the said commodity stands included within the commodity 'papar khar', which stands exempt from tax w.e.f. 1.4.06.

12. There is yet another aspect of the matter. Merely because, at one point of time, while interpreting a notification issued exempting a particular commodity exempt from tax, by way of clarificatory circular yet another commodity was deemed to be included therein, the two commodities though different in common and commercial parlance, shall not always be treated to be one and same commodity. Merely because the 'saji' is also used for manufacture of 'papar', it is not possible to draw a conclusion that 'saji' and 'papar khar' both the commodities are one and the same commodity. This court is in agreement with the finding arrived at by the Tax Board that the 'papar khar' and 'saji' are known as two different commodities in the common and commercial parlance"

9. As the matter has been decided by the Hon'ble Rajasthan High Court leaving no confusion, whatsoever, regarding taxability of the items 'Saji' till it was exempted on 09.03.2011, therefore, in light of the authoritative pronouncement of the Hon'ble Rajasthan High Court in the judgment referred above, it is held that 'Saji' is taxable @ 4% / 5% (as the rate prevailed during the relevant period for Schedule-IV goods) upto 08.03.2011.

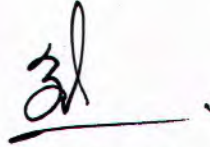






The judgments of various Hon'ble Courts as referred by the appellant assessee do not offer any assistance to them in light of the judgment of the Hon'ble Rajasthan High Court (supra) on the same issue as agitated before us in instant appeals. Accordingly, the appeal filed by the Revenue, being appeal no. 1748/2011/BKN, is accepted and the impugned appellate order under challenge, is set aside. For remaining appeals, the appellate orders are confirmed and appeals filed by the assessee are rejected.

10. Resultantly, the appeal no. 1748/2011 is accepted and appeal numbers 164/2012, 436/2013, 2003/2014, 2004/2014, 1266/2014, 1267/2014, 1268/2014, 1269/2014, 1310/2014, 1270/2014, 1271/2014, 1272/2014, 1273/2014, 1274/2014, 1275/2014 & 1276/2014, are rejected.
11. Order pronounced.



(Omkar Singh Ashiya)  
Member



(V. Srinivas)  
Chairman