

Rajasthan Tax Board, Ajmer

1. Appeal No. 1889/2015/Jaipur
2. Appeal No. 1890/2015/Jaipur
3. Appeal No. 1891/2015/Jaipur

M/s Ceramic Tableware Pvt. Ltd.,
S-707(A), Road No. 6,
VKIA, Jaipur

Appellant

VERSUS

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

Respondent

4. Appeal No. 75/2016/Jaipur
5. Appeal No. 76/2016/Jaipur
6. Appeal No. 77/2016/Jaipur

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

Appellant

VERSUS

M/s Ceramic Tableware Pvt. Ltd.,
S-707(A), Road No. 6,
VKIA, Jaipur

Respondent

D.B.

SHRI RAJEEV CHOUDHARY, MEMBER

SHRI OMKAR SINGH ASHIYA, MEMBER

Present :

Shri Vivek Singhal, Advocate

for Assessee

Shri R.K. Ajmera,

Dy. Govt. Advocate

for Revenue

Dated : 16/05/2018

JUDGMENT

1. Appeal nos. 1889 to 1891/2015/Jaipur have been filed by the appellant dealer (hereinafter referred as the "assessee") and appeal nos. 75 to 77/2016/Jaipur have been filed by the Revenue against order of the Appellate Authority-III, Commercial Taxes Department, Jaipur (hereinafter called the "appellate authority"), dated 05.10.2015, wherein the levy of entry tax and interest was upheld but the penalty under section 15(2) was set aside, as were imposed by the Assistant Commissioner, Anti-Evasion, Zone-II, Jaipur (hereinafter called

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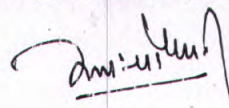
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the "assessing officer" or the "AO"), vide his orders dated 26.06.2015 passed under Section 15(1), (2) and 34A of the Rajasthan Tax on Entry of Goods into Local Areas Act, 1999 (hereinafter called the "Act"). The details of the appellate order as well AO's orders are as under:-

Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Authority's order Details			
		Appeal No.	order dated	order dated	Tax	Interest	Penalty
1889/2015 75/2016	2009-10	151/Appeals-III/ Entry Tax/E/JPR/ 2015-16	05.10.2015	26.06.2015	27127 -	18442 -	- 40691
1890/2015 76/2016	2010-11	152/Appeals-III/ Entry Tax/E/JPR/ 2015-16	05.10.2015	26.06.2015	134280 -	75200 -	- 201420
1891/2015 77/2016	2011-12	153/Appeals-III/ Entry Tax/E/JPR/ 2015-16	05.10.2015	26.06.2015	425616 -	187270 -	- 538424

2. Since all the appeals involve common issues, therefore, the same are decided 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 assessee is engaged in manufacturing of various crockery items such as cups, mugs, plates, bowls, saucers, tea pots, sugar pots etc. and during the course of the manufacturing it uses various raw materials, namely: quartz, feldspar powder, potash power, china clay, crushed bones etc. and for decoration on these crockery items, some paper and colour is also used by way of drawing pictures on a paper and affixing the same on the end product. These 'papers' are affixed and planted over the various crockery items and by the heating process the pictures get permanently embossed on these crockery items.
4. A survey was conducted of the assessee firm on 06.06.2014 by the anti-evasion authorities and it was found that the 'colours' used by the assessee for implanting decoration on the crockery items, were taxable under entry 32 of the notification issued under Section 3 (1) of the Act. The departmental authorities came to the conclusion that the colours used by the assessee were in-fact 'Dyes and Dye-stuffs' on which entry tax is payable by virtue of the said entry 32. Apart from this, it was also found that the assessee used 'Propane Gas' as fuel on which entry tax





was though paid but the assessee had not included the CST amount as charged in the purchase invoices and other expenses, into the 'taxable purchase value of the goods'. It was also found that the assessee brought 'paper' into the local area, from out of the State and consumed some goods for his own use, which were liable to entry tax. Therefore, a case was made out for escaped assessment and after issuing the notice and taking reply of the assessee on record, the AO imposed tax, interest and penalty on the value of these goods so brought into the local area.

5. Aggrieved of this imposition the assessee preferred appeals before the appellate authority, who partly accepted the appeals vide his order dated 26.06.2015, in which the levy of tax and interest was upheld and the penalty was set aside. Aggrieved of the same, the assessee as well as the Revenue are in appeal before the Tax Board u/s 24 of the Act.
6. Learned advocate appearing for the assessee submits that the assessee uses various colours for ornamentation and decoration of their crockery products and the colours used by them can in no way be classified as 'Dyes and Dye-stuffs', therefore, the AO was wrong to classify these goods as being taxable under the Act. He further submits that on bare perusal of the said entry in the relevant notifications, that these items essentially relate to the goods used by the textile industry. He argues that at the end of the said entry, it has been qualified by the words 'in textile processing', therefore, whatever the items have been used in that entry, those essentially pertain to the textile industry and not to the ceramic ware industry. He referred the following judgments for interpretation of the taxing entry :-
 - i) Devarsons Pvt. Ltd. V/s CCE (1984) 17 ELT 135 (Trib.) order dated 22.05.1984
 - ii) Parle Agro V/s CCT (2017) 16 RGSTR 229 (SC) order dated 09.05.2017
 - iii) Godrej Sara Lee Ltd. V/s AC (2017)106 VST 97 (AP) order dated 01.06.2017

He further submits that the appellate authority has not appreciated these facts as well as the principles for legal interpretation of a taxing entry, therefore, the appellate order which has confirmed the levy of tax and interest on these items, deserves to be set aside. It was also submitted that tax levied on

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self-consumption of 'Paper' and the tax levied in the taxes (CST) paid and the expenses incurred in procuring the 'Propane gas' was not proper, hence he requests to set aside the levy of tax and interest on these items.

7. Per contra, the learned Deputy Government Advocate appearing for the Revenue supported orders of the AO and argues that the 'colour' as used by the assessee, squarely falls under the entry of 'Dyes and Dye-stuff', therefore, exigible to the entry tax. On the issue of holding the taxes and other expenses as part of the taxable purchase value of the goods of the 'propane gas', he submits that it is squarely covered by the definition of 'taxable purchase value of the goods' as given in section 2(1)(r) of the Act, therefore, the same deserves to be upheld. It was also submitted that the AO has rightly levied the tax, interest and penalty on self consumption of the paper. He further argues that the appellate authority has wrongly set aside the penalty because the assessee avoided and evaded the payment of tax on the commodities under question, therefore, he requests to restore the penalty and set aside the appellate order to this extent.
8. We have gone through the submissions of both the parties and perused the relevant record.
9. Before going into the first issue as to whether the 'colours' used by the Ceramic-ware Industry would fall into the category of 'dyes and dye-stuffs' or not, and for that we have to determine as to what constitutes or comprises the 'dyes and dye-stuffs' vis-a-vis the 'colours', and for that a few authentic references are as under:

Collins English Dictionary:

"Dye is a substance made from plants or chemicals which is mixed into a liquid and used to change the colour of something such as cloth or hair".

Encyclopedia Britannica:

"Dye, substance used to impart colour to textiles, paper, leather, and other materials such that the colouring is not readily altered by washing, heat, light, or other factors to which the material is likely to be exposed. Dyes differ from pigments, which are finely ground solids dispersed in a liquid, such as paint or ink, or blended with other materials. Most dyes are organic compounds (i.e., they contain carbon), whereas pigments may be inorganic compounds (i.e., they do

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not contain carbon) or organic compounds. Pigments generally give brighter colours and may be dyes that are insoluble in the medium employed."

10. The Customs, Excise and Gold Tribunal - Delhi in the matter of **Devarsons Private Ltd. vs Collector of Central Excise** [1984 (17) ELT 135 (Tri Del)] has very lucidly defined the terms 'colour' and 'dyes and dye-stuff', as follows:

"In common parlance also, "dyeing" refers to only dyeing of fibrous materials. On the other hand, colouring of petrol, plastic, soap, etc. with the help of oil soluble colours is not called "dyeing" but "colouring".

27. All dyes are used as colours or colourants; but not all colours/ colourants are used as dyes. Although dyeing is popularly associated with colouring of fibrous material, it is really a process that is applied to many other non-fibrous substances. In general, a dye must penetrate the substrate: it must suffuse and mingle with it so intimately that the entire dyed material is coloured. It cannot be removed without more or less destroying the substrate or dyed material; it becomes part of the coloured or dyed material.

28. Dyes are used to colour textile fibres, rubbers, plastics, metals and many other products. In the 1950's a new revolutionary type of dye was developed known as the reactive dye : this could form physico-chemical bonds with cellulose, thus binding itself permanently in a way no common dye could. These dyes are now the most commonly used types in colouring cellulose based fibres. Dyes are also used to colour soaps, liquids, leather, paper, metals. In all these cases, it is noteworthy that the dye cannot be separated from the dyed soap, textile fibres, aluminium, paper etc."

11. As held above, all dyes are used as colours or colourants; but not all colours/ colourants are used as dyes, thus the colours used by the assessee may or may not fall under the category of 'dyes and dye-stuffs'. So as to arrive at a definite conclusion, we have to look at the relevant entry and the rule of interpretation of the taxing entry.
12. The relevant entry as prevalent during the years 2009-10, 2010-11 and 2011-12, as appearing in the relevant notifications number [F.12 (14) FD/Tax /2006- 137] dated 08.03.2006 and

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F.12(25)FD/Tax/11-150 dated 09.03.2011, is mentioned as under:-

The entry as per the notification dated 08.03.2006:

S.No.	Description of Goods	Rate of Tax (%)
35.	Dyes and dye-stuffs, textile auxiliaries including chemicals used in textile processing and starch.	4

The entry as per the notification dated 09.03.2011:

31	Dyes and dye-stuffs, textile auxiliaries including chemicals used in textile processing and starch.	4.00
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Although the AO has mentioned the entry number pertaining to dyes and dye-stuff as 32, however, the relevant entry for the period 01.04.2009 to 08.03.2011 is 35 as per notification dated 08.03.2006 and for the period 09.03.2011 to 13.07.2014, this is numbered 31 as per the notification dated 09.03.2011. So, the entry number stands corrected accordingly.

13. For deriving the true meaning of the said entry, it is important to look into the entry in its entirety and not to take it in a piecemeal. In this regard, the principle of 'Noscitur a Sociis' helps to understand the taxing entry;

The Principle of 'Noscitur a Sociis': Meaning:

Associated words take their meaning from one another under the doctrine of noscitur a sociis, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it.

14. The Hon'ble Supreme Court of India, in the case of **M/s. Parle Agro (P) Ltd. Vs Commissioner of Commercial Taxes, Trivandrum**, Civil Appeal Nos. 6468 and 6469 of 2017, judgment dated 09.05.2017 has elaborately discussed this principle and held as under:

"The Principle of 'Noscitur a Sociis':

40. The appellants before the Committee of Commissioners as well as High Court have pleaded that Entry 71 Item 5 mentioned "similar other products not specifically mentioned under any other entry in this list or any other schedule", was required to be considered in the light of commodities as included in other items mentioned in Entry 71. It was submitted that 'Appy Fizz'

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which a fruit juice based drink is more akin to other commodities included in the Entry 71 other than that which was included in Section 6(1)(a).

In interpreting Item 5 of Entry 71 the doctrine of 'noscitur a sociis' is fully attracted. Justice G.P. Singh in 'Principles of Statutory Interpretation, 14th Edition, has explained the 'noscitur a sociis' in the following words:

"(b) Noscitur a Sociis

The rule of construction *noscitur a sociis* as explained by LORD MACMILLAN means: "The meaning of a word is to be judged by the company it keeps". As stated by the Privy Council: "It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them". It is a rule wider than the rule of *ejusdem generis*; rather the latter rule is only an application of the former. The rule has been lucidly explained by GAJENDERAGADKAR, J., in the following words: "This rule, according to MAXWELL, means that when two or more words which are susceptible of analogous meaning are coupled together, they are understood to be used in their cognate sense. They take as it were their colour from each other, that is, the more general is restricted to a sense analogous to a less general. The same rule is thus interpreted in Words and Phrases." "Associated words take their meaning from one another under the doctrine of *noscitur a sociis*, the philosophy of which is that the meaning of the doubtful word may be ascertained by reference to the meaning of words associated with it; such doctrine is broader than the maxim *ejusdem generis*." In fact the latter maxim "is only an illustration or specific application of the broader maxim *noscitur a sociis*". It must be born in mind that *noscitur a sociis*, is merely a rule of construction and it cannot prevail in cases where it is clear that the wider words have been deliberately used in order to make the scope of the defined word correspondingly wider. It is only where the intention of the Legislature in associating wider words with words of narrower significance is doubtful, or otherwise not clear that the present rule of construction can be usefully applied."

41. This Court in *Pardeep Aggarbatti Vs. State of Punjab*, 1997 (96) E.L.T. 219(S.C.), considering Entry 16

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of Schedule A of Punjab General Sales Tax Act, 1948, in paragraph 9 has laid down following:

"9. Entries in the Schedules of Sales tax and Excise statutes list some articles separately and some articles are grouped together. When they are grouped together, each word in the Entry draws colour from the other words therein. This is the principle of noscitur a sociis."

15. The Hon'ble Andhra Pradesh High Court, in the case of **Godrej Sara Lee Limited vs Asstt. Commissioner (CT)** (2017)106 VST 97 (AP) in judgment dated 1 June, 2017, has held as under:

"There is no fixed test for classification of a taxable commodity. (Wockhardt Life Sciences Ltd.; A. Nagaraju Bros. v. State of A.P.,). Whether a particular article will fall within a particular Entry or not has to be decided on the basis of tangible material or evidence to determine how such an article is understood in 'common parlance' or in the commercial world' or in the trade circle' or in its popular sense meaning. It is they who are concerned with it, and it is the sense in which they understand it, that constitutes the definitive index of the legislative intention, when the statute was enacted. The combined factors that are required to be taken note of, for the purpose of classification of the goods, are the composition, the product literature, the label the character of the product and functional utility and predominant or primary use of the commodity which is being classified. (Wockhardt Life Sciences Ltd.; D.C.M. v. State of Rajasthan)."

The Hon'ble AP High Court further held in this judgment:

"In examining the question as to what is the meaning of words occurring in an entry in the Schedules to a sales tax enactment, the Court should not only look at the words, but should also look at the context, the collection and the object of such words, relating to such a matter and interpret the meaning, according to what would appear to be the meaning intended to be conveyed by the use of the words under such circumstances. A word is known by the company it keeps. (Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. K.A. Latheef ; Rein v. Lane ; Varkey v. Agricultural Income-tax and Rural Sales Tax Officer ; and M.K. Ranganathan). The rule of

construction noscitur a sociis is that the meaning of each of the words is to be understood by the company it keeps. It is a legitimate rule of construction to construe words in an Act with reference to the words found in immediate connection with them. The rule is explained differently: that meaning of doubtful words may be ascertained by reference to the meaning of words associated with it. (Ahmedabad (P) Primary Teachers Assn. v. Administrative Officer);"

16. So, by applying the abovementioned rule of construction 'noscitur a sociis', it is found that the taxing entry in question i.e. 'Dyes and dye-stuffs, textile auxiliaries including chemicals used in textile processing & starch', essentially pertains to the dyes and dye-stuff used in textile industry for dyeing the fabric. Therefore, we are of the considered view that the colours used by the Ceramicware industry or the assessee as such would not fall under this entry. Accordingly, the tax and interest as levied by the AO and confirmed by the appellate authority cannot be sustained, hence stands set aside. By virtue of this finding, the issue to challenge the quashing of penalty by the appellate authority does not survive to be entertained.
17. The second issue relates to levy of tax on self-consumption of 'paper' by the assessee, which was brought from outside the State into the local area. The section 3 of the Act explicitly speaks of the circumstances under which the tax is levied, and the same is reproduced as under:

"3) Levy of Tax.-

(1) There shall be levied, collected and paid to the State Government a tax on entry of any goods brought into a local area, for consumption, use or sale therein, with effect from such date and such rates, not exceeding 65 percent of the value of the goods, as may be specified by the State Government, by notification in the Official Gazette, and different dates and different rates may be specified in respect of different goods or different class of goods or different local areas."

Since the assessee has consumed the paper for its own use, therefore, by virtue of Section 3 as quoted above, the assessee is liable to pay tax on it. Accordingly, the levy of tax and interest on this, is confirmed.

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18. The third issue relates to the imposition of tax on the Central Sales Tax (CST) as paid by the assessee while purchasing the propane gas, and payment of other expenses during the course of bringing the goods into the local areas. In this regard, the definition of the 'taxable market value of goods' leaves no ambiguity, whatsoever it be, in this regard. The said definition as contained in section 2(1)(r) is as under:

"taxable purchase value of the goods' shall mean the purchase price at which a dealer has purchased the goods inclusive of charges borne by him as cost of transportation, packing, forwarding and handling commission, insurance, taxes, duties and the like, or if such goods have not been purchased by him, the prevailing market price of such goods in the local area."

By virtue of this definition, the levy of tax and interest on the part value comprising of taxes and other expenses borne by the assessee, is fully justified, hence, the orders of the AO as well as the appellate authority in this regard, are confirmed.

19. So far as the issue of imposition of penalty under section 15(2) of the Act is concerned, it has been held by the Hon'ble Supreme Court as well as the Hon'ble Rajasthan High Court that where the transactions are entered in the books of accounts of the assessee and there is a dispute regarding the rate of tax, in such cases penalty provisions should not be invoked. The judgments worth mentioning in this regard are:-

- (i) Shree Krishna Electricals Vs. State of Tamil Nadu & Another (2009) 11 SCC 587
- (ii) Reckitt Benckiser India Ltd Vs. ACTO, SB STR No. 7/2012 order dated 07.04.2017 (RHC)

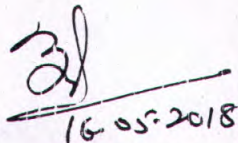
20. Since the present matters also relate to a dispute about classification of the goods as to whether it falls into the category of a particular entry or not, and this fact is not in dispute that the transactions were well recorded in the books of accounts of the assessee. Moreover, the section 15 (2) stipulates imposition of penalty when there is willful non-disclosure of the entry of such goods and which is not the case here. Therefore, the penalty as levied under section 15(2) of the Act by the AO does not stand justified in light of the above mentioned judicial pronouncements, and the same has rightly been set aside by the appellate authority.

21. As discussed above, the findings as arrived in the foregoing paras are summarised thus:

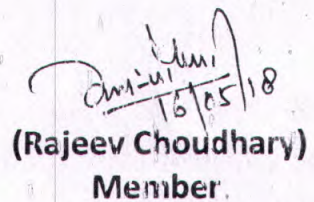
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- i) The 'colour' as used by the assessee in manufacturing of ceramic wares, shall not be covered by the entry '*Dyes and dye-stuffs, textile auxiliaries including chemicals used in textile processing & starch*'; so, the levy of tax and interest thereupon is set aside
 - ii) Entry tax is leviable on consumption of paper by the assessee, so the tax and interest levied thereupon is upheld;
 - iii) Taxes paid and other expenses borne by the assessee while purchasing the goods (propane gas)/bringing the goods into the local area, shall form part of the taxable purchase value of the goods, hence levy of tax and interest on this component is upheld; and
 - iv) The penalty imposed under section 15(2) of the Act is not sustainable, hence, set aside.
22. Accordingly, the appellate orders are partly confirmed. The appeals of the assessee are partly accepted and that of the Revenue are rejected.
23. Order pronounced.


16.05.2018

(Omkar Singh Ashiya)
Member


16/05/18
(Rajeev Choudhary)
Member.