

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Sales Tax Revision / Reference No. 197/2018

M/s Chambal Fertilisers And Chemical Ltd. Kota, Gadepan Kota

----Petitioner

Versus

1. Assistant Commissioner, Commercial Taxes Department,
Special Circle-II, Kota
2. Appellate Authority Commercial Taxes Department, Ajmer

----Respondents

Connected With

S.B. Sales Tax Revision / Reference No. 104/2020

M/s Chambal Fertilisers and Chemicals Ltd., Kota

----Petitioner

Versus

1. Commercial Taxes Officer, Commercial Taxes Department
Special Circle -II ,kota
2. Appellate Authority, Commercial Taxes Department,
Ajmer.

----Respondents

For Petitioner(s)	:	Mr. Anuroop Singhi with Mr. Aditya Vijay
For Respondent(s)	:	Mr. Harendar Neel

HON'BLE MR. JUSTICE SAMEER JAIN

Judgment

REPORTABLE

03/08/2023

PREFATORY REMARKS:

1. In both the Sales Tax Revisions/References, the scope of the controversy involved is identical, albeit the only difference pertains to the distinct Assessment Years i.e. S.B. Sales Tax Revision/Reference No. 197/2018 deals with the Assessment Year



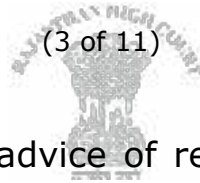
2011-2012, whereas S.B. Sales Tax Revision/Reference No. 104/2020 pertains to the Year 2013-2014. Therefore, with the consent of learned counsel for both the sides, the Sales Tax Revisions/References are being taken up for final disposal together. For efficacious disposal, **S.B. Sales Tax Revision/Reference No. 197/2018** is taken as the lead file. In order to answer the question of law as formulated herein-under, the facts inter se shall apply *mutatis mutandis* in both the Revisions/References.

2. The Sales Tax Revisions/References were admitted on the following question of law:-

"Whether the learned Tax Board was justified in not considering the amendment brought under the provisions of Section 53(4) of the RVAT Act w.e.f. 31.07.2014 in right perspective then depriving the petitioner of its own right of interest on the refund due to it?"

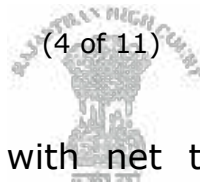
SUBMISSIONS OF THE PETITIONER:

3. Learned counsel for the petitioner-assessee has submitted that the assessee-company is a Public Limited Company, which is duly registered under the Rajasthan Value Added Tax Act, 2003 (for brevity, RVAT Act) and the Central Sales Tax Act, 1956 (for brevity, CST Act). The assessee-company filed its VAT Quarterly Return for the years 2011-2012 and 2013-2014. In pursuance to the return filed by the assessee-company for the said quarter, an assessment order was passed by the Commercial Tax Officer dated 17.01.2014, whereby, admittedly, a sum of Rs. 4,83,42,455/- was ascertained as the net refundable amount for the Assessment Year 2011-2012. Thereafter, the respondent no.1,



on 30.01.2015, issued an advice of refund of VAT to the tune of Rs. 4.55 crores in the name of the assessee-company. However, in the said refund, contrary to the established statutory provisions under Section 53 of the RVAT Act, no consequential grant of interest was awarded to the petitioner. Therefore, being aggrieved, the petitioner separately filed request letters dated 01.05.2015 and 13.08.2015 for granting/allowing interest on the refundable amount as per the statutory provisions provided under Section 53(4) of the RVAT Act. Thereafter, respondent no.1, passed the interest assessment order dated 07.09.2015 for the tax assessment year 2011-2012 ascertaining the interest to the tune of Rs. 54,57,409/- on refund amount only for the period starting from 01.05.2013 to 30.04.2015 at the rate of 6%, as per the relevant notification.

4. Learned counsel for the assessee-company further submitted that against the interest assessment order, an appeal was preferred by the assessee-company. The respondent no.2, vide order dated 09.12.2016, rejected the appeal for the Assessment Year 2011-2012. Therefore, the petitioner preferred another appeal before the Tax Board. The Tax Board, while placing reliance upon provisions of Section 17 of the RVAT Act, confirmed the appellate order dated 09.12.2016. As a result, the present STR was filed by the assessee-company. In order to highlight the errors purported to have crept in the order passed by the Tax Board, learned counsel submitted that the assessing authority as well as the appellate authority had misinterpreted the legally applicable provisions and relied upon Section 17 of RVAT Act,



which categorically deals with net tax payable. Whereas, the specific provisions pertaining to the grant of refund have been incorporated under Section 53(4) of the RVAT Act, which were in *toto* ignored and/or misconstrued by the respondent-authorities. Therefore, in light of the above, it was prayed that the order impugned be quashed and set aside, and the due date be calculated in accordance with Section 53(4) of the RVAT Act.

SUBMISSIONS OF THE RESPONDENTS:

5. *Per contra*, learned counsel for the Revenue has submitted that the learned Tax Board after taking into consideration all the relevant documents and material on record has decided the issue qua the date of computation of due date in favour of the answering respondent-Revenue. Moreover, there is no legal infirmity in the order passed by the learned Tax Board. Therefore, this Court, while exercising powers of Revision, cannot delve into the disputed questions of facts. While relying upon the order impugned, learned counsel placed reliance upon Section 17 of the RVAT Act, which is reproduced herein-under:-

"17. Tax payable by a dealer. – (1) *Subject to the other provisions of this Act, the net tax payable by a registered dealer, other than the dealer covered by sub-section (2) of section 3 or section 5, for a tax period shall be calculated as under: –*

$$T = (O+R+P) - I$$

Where –

T is net tax payable;

O is amount of output tax;

R is amount of reverse tax;

P is the amount of tax payable under sub-section (2) of section 4; and I is the amount of input tax.

(2) *Where the net tax payable under sub-section (1) has a negative value, the same shall be first adjusted against any tax*



payable or amount outstanding under the Central Sales

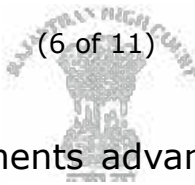
Tax Act, 1956 (Central Act No. 74 of 1956) 1"or under this Act or the repealed Act and the balance amount if any, shall be carried forward to the next tax period or periods. In case the dealer claims refund of the balance amount, if any, at the end of the year, the same shall be granted only after the end of the immediately succeeding year. "However," the Commissioner after recording reasons for doing so may, by a general or specific order, direct to grant such refunds even earlier."

(3) Notwithstanding anything contained in this Act, where the sales are made on behalf of the principal registered under this Act by an agent also registered under this Act, such sales shall be deemed to be the sales of the principal and the agent shall render the accounts of such sales in the manner as may be prescribed.

(4) Every person whose registration is cancelled under this Act shall pay tax in the manner prescribed in respect of every taxable goods held in stock and capital goods on the date of such cancellation."

6. Learned counsel submitted that in terms of Section 17(2) of the RVAT Act, if a dealer claims refund of the balance amount, provided if any, at the end of the year, the same shall be granted only after the end of the immediately succeeding year. In light of the same, it was argued that the due date/period was rightly ascertained as commencing from 01.05.2013 to 30.04.2015 for the Assessment Year 2011-2012. Lastly, it was submitted that fiscal legislations are self-contained codes and rules of interpretation should be construed literally and there should not be an purposive extension in the interpretation of the same. In terms of the submissions made herein-above, learned counsel prayed for the dismissal of the instant Revision/Reference.

DISCUSSION AND ANALYSIS:



7. Heard the arguments advanced by learned counsel for both the sides and scanned the record of the Revision/Reference.

8. At the outset, preceding to the discussion on merits, this Court deems it appropriate to take note of the instrumental legal provisions, necessary for adjudicating upon the *lis* in question.

(i) **Section 53(4) of the RVAT, 2003**

It is noted that Section 53(4) of the RVAT Act has been successively amended from time to time, in order to ascertain the due date of computing interest, as accruing in favour of the assessee. Therefore, for ready reference, the provisions of Section 53(4) of the RVAT Act, as they existed at different stages in time, are reiterated herein-under:

a. Provisions of Section 53(4) of the RVAT Act, 2003, as they existed prior to 15.04.2011.

"(4) The refund amount under this Section shall carry interest w.e.f. date of its deposits at such rate as may be notified by the State Government from time to time."

b. Provisions of Section 53(4) of the RVAT Act, 2003, as they existed w.e.f. 15.04.2011 to 30.07.2014.

"(4) An amount refundable under this Act shall be refunded within 30 days from the date on which it becomes due and if such amount is not refunded within the aforesaid period of 30 days, it shall carry interest w.e.f. the date of expiry of the aforesaid period up to the date of payment, at such rate as may be notified by the State Government."

(ii) **Section 17(2) of the RVAT Act, 2003**

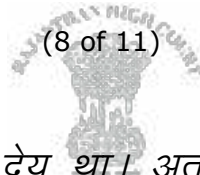
"(2) Where the net tax payable under sub-section (1) has a negative value, the same shall be first adjusted against any tax payable or amount outstanding under the Central Sales Tax Act, 1956 (Central Act No. 74.1956) [or under

this Act or the repealed Act and the balance amount if any, shall be carried forward to the net tax period or periods. In case the dealer claims refund of the balance amount, if any, at the end of the year, the same shall be granted only after the end of the immediately succeeding year. However, the Commissioner after recording reasons for doing so may, by a general or specific order, direct to grant such refunds even earlier."

9. Having taken note of the instrumental legal provisions as reproduced herein-above, it becomes abundantly clear that the provisions of Section 17(2) of the RVAT Act categorically deal with the procedure for the tax payable by a dealer i.e. essentially payment and its refund, if any; whereas, Section 53(4) of the RVAT Act specifically deals with the procedure qua refund and the consequential interest to be awarded along with it, if any. Therefore, by a mere reading of the provisions, it is apparent that the two distinct legal provisions are mutually exclusive and accordingly, they cannot be read in tandem to ascertain the due date for computing interest on the amount refundable in favour of the assessee.

10. At this juncture, it is pertinent to take note of the assessment order dated 09.12.2016, passed by the Deputy Commissioner (Appeals). The relevant extract is reproduced herein-under:

"बहस पर मनन किया गया व अपीलार्थी की मांग पर विचार किया गया। धारा 53(4) के प्रावधानानुसार दिनांक 15.04.2011 के पूर्व देय होने वाले मामलों में रिफण्ड के साथ ब्याज देय होगा एवम् ब्याज जमा राशि के दिवस से गणनीय होगा। वर्ष 2010-11 का रिफण्ड धारा 17(2) के अनुसार दिनांक 01.04.2011 को due हो गया था एवम् दिनांक 01.04.2011 को रिफण्ड देते समय तत्समय विद्यमान प्रावधानानुसार date of



deposit से ही ब्याज देय था। अतः रिफण्ड पर ब्याज की गणना दिनांक 15.04.2011 से पूर्व के मामलों में *date of deposit* से ही होगी।

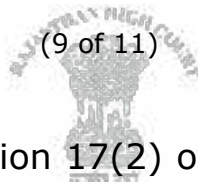
इस प्रकार चूंकि निर्धारण वर्ष 2010-11 में रिफण्ड दिनांक 15.04.2011 के पूर्व ही *due* हो गया था अतः उन रिफण्ड पर ब्याज की गणना दिनांक 14.04.2011 के पूर्व धारा 53(4) के प्रावधानानुसार कर जमा दिनांक से ब्याज दिये जाने का आदेश दिया जाता है। प्रकरण निर्धारण अधिकारी को प्रतिप्रेषित कर, उपर्युक्तानुसार गणना करने का निर्देश दिया जाता है।

जहां तक निर्धारण वर्ष 2011-12 के संबंध में रिफण्ड पर ब्याज दिये जाने का प्रश्न है, उल्लेखनीय है कि निर्धारण अधिकारी द्वारा दिनांक 30.04.2015 को प्रत्यार्पित राशि का भुगतान किया जिस पर कर निर्धारण अधिकारी द्वारा दिनांक 01.05.2013 से दिनांक 30.04.2015 तक के ब्याज का भुगतान किया गया। इस संबंध में अब प्रश्न यह है कि क्या उक्त दिया गया ब्याज विधिसम्मत एवम् उचित है कि नहीं इस संबंध में माननीय आयुक्त, महोदय, वाणिज्यिक कर विभाग, राजस्थान, जयपुर द्वारा जारी परिपत्र क्रमांक एफ.16(327) वैट/टैक्स/सीसीटी/11/90 दिनांक 16.04.2013 (क्रमांक 3042) का अध्ययन किया गया जो निम्न प्रकार है:-

Regarding assessment of cases for the year 2011-12 where refund has been claimed by the dealer in his returns.

As per the provisions of sub section(2) of section 17 of the Rajasthan Value Added Tax Act, 2003 the refund of the excess Input Tax Credit claimed by any dealer for the year 2011-12 have become due on 01.04.2013 and as per the provision of sub section (4) of section 53 of the Act, interest at the rate notified under the act would be allowed, to the dealers where the assessing authority fails to grant refund after 30.04.2013."

11. Upon a considered perusal of the said order, it is apparent that the learned Deputy Commissioner, while computing the due date for the Assessment Year 2010-2011, placed reliance



upon the provisions of Section 17(2) of the RVAT Act and held the due date in question to be 01.04.2011 and subsequently, gave a grace period of 30 days in connection therewith and thereafter, awarded interest. Howsoever, for the Assessment Year 2011-2012, learned Deputy Commissioner preferred the provisions of Section 17(2) of the RVAT Act and gave the effect of the succeeding year in addition to the grant of 30 days and thereby, calculated the demand from 01.05.2013 to 30.04.2015, which is erroneous.

12. While allowing the present Sales Tax Revision, this Court is of the following view:

(i) That Article 265 of the Constitution of India precludes the State from levying/collecting tax without the authority of law.

(ii) That provisions for refund are specifically provided under Section 53(4) of the RVAT Act, 2003.

(iii) That the Deputy Commissioner (Appeals) itself vide order dated 09.12.2016, while adjudicating upon the appeal of the assessee for the Assessment Years 2010-11 and 2011-2012 has duly held the due date for the assessment year starting from 01.04.2010 to 31.03.2011 (Assessment Year 2010-2011) to be 01.04.2011.

(iv) That no challenge to the said finding has been raised by the respondent-Revenue. Therefore, the Revenue is bound by its own adjudication and determination of the due date.

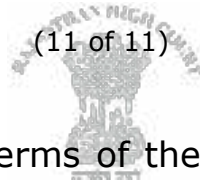
(v) That as per the above determination, the due date is the immediate date subsequent to the end of the Assessment Year. Accordingly, the due date for Assessment Year 2011-2012 i.e. 01.04.2011 to 31.03.2012 would be 01.04.2012.

(vi) Thus, for the Assessment Year 2011-2012, the due date for the purpose of calculation of refund is 01.04.2012. Furthermore, it is a settled preposition of law that refund under the RVAT Act is governed by the provisions contained under Section 53(4) of the RVAT Act. Thus, at the relevant point in time, the amendment which came into effect from 15.04.2011 was prevalent and in accordance with the same, pursuant to the addition of the period of 30 days, the due date of refund of interest shall be 01.05.2012.

(vii) Similarly, as per Section 53(4) of the RVAT Act, which was prevalent between 15.04.2011 to 30.07.2014, and which is applicable for the concerned Assessment Years 2011-2012 as well as 2013-2014, an amount refundable shall be required to be refunded within a period of 30 days from the date on which it becomes due. Thus, adding 30 days to the due date as calculated above i.e. 01.04.2012, the date for granting interest in connection forthwith would be 01.05.2012.

(viii) That accordingly, for the Assessment Year 2011-2012, the Revenue is bound to grant interest on refund w.e.f. 01.05.2012 till the date of payment of refund.

(ix) That the Circular dated 16.04.2013, upon which reliance was placed by the learned Appellate Authority, has no legal sanction, as it is *sans* statutory powers. The said circular was barely an interpretation tendered by the learned Commissioner, which did not have any legal backing, in the absence of any statutory authority.



13. Accordingly, in terms of the observations made herein-above, the question of law as formulated, is answered in favour of the assessee-company and against the Revenue.

14. In view of the above, the present Sales Tax Revision/Reference is allowed. Pending applications, if any, stand disposed of.

(SAMEER JAIN),J