

**Rajasthan Tax Board, Aimer**

Appeal No. 2412/2011/Jaipur  
Appeal No. 2413/2011/Jaipur  
Appeal No. 2661/2011/Jaipur

M/s Varun Beverages Ltd.  
B/73, Subhash Nagar,  
Jaipur

...Appellant

**VERSUS**

Deputy Commissioner (Appeals)-III,  
Commercial Taxes, Jaipur

Assistant Commissioner, Circle E,  
Commercial Taxes, Jaipur

.....Respondents

**D.B.**

**SHRI K.L. JAIN, MEMBER**

**SHRI OMKAR SINGH ASHIYA, MEMBER**

Present :

Alkesh Sharma, Advocate

Shri N.K. Baid, Dy. Govt. Advocate

for Appellant

for Respondents

Dated : 22 /12/2017

**JUDGMENT**

1. These three appeals have been filed by the appellant dealer (hereinafter called the "appellant"), against three orders of the Deputy Commissioner Appeals-III, Commercial Tax Department, Jaipur (hereinafter called the "appellate Authority") who upheld the assessment orders passed by Assistant Commissioner, Special Circle, Rajasthan, Jaipur (hereinafter called the "assessing authority"), as mentioned below :-

| Appeal No. | A.Y.    | Appellate Authority's order Details |             | Assessing Authority's order Details |             |
|------------|---------|-------------------------------------|-------------|-------------------------------------|-------------|
|            |         | Appeal No.                          | order dated | order passed under section          | order dated |
| 2412/2011  | 2006-07 | 312/Appeals-III/10-11               | 13.10.2011  | 33 of the RVAT Act                  | 29.04.2009  |
| 2413/2011  | 2007-08 | 312/Appeals-III/10-11               | 30.10.2011  | 24 of the RVAT Act                  | 30.03.2010  |
| 2661/2011  | 2007-08 | 154/Appeals-III/11-12               | 09.11.2011  | 9 of the CST Act                    | 30.03.2010  |





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2. As a common issue is involved in all the three appeals, therefore, the same are disposed off with a common order. Copy of the order be placed on relevant appeal files.

3. Brief facts leading to the present appeals are that the appellant was granted tax exemption vide notification no. F4(68)FD/Tax Div./99/270 dated 24.01.2000 for 13 years from the date of first invoice of sale and the benefit was limited to the extent of 130% of total Fixed Capital Investment (in short FCI), on meeting out certain conditions as mentioned in the notification. While the date of first invoice of sale of the soft drink manufactured by the appellant was 30.03.2000, but it fulfilled the conditions of the notification on 05.04.2004, therefore, the benefit of tax exemption was available to it from 05.04.2004 to 29.03.2013, which is not in dispute.

4. In the meanwhile, the Value Added Tax system was introduced in the State w.e.f. 01.04.2006 and vide notification no. F.12(63)Tax/2005-172 dated 31.03.2006, the State Government provided an option to the existing dealers availing benefit of tax exemption under various Incentive Schemes or notifications, to switch over to deferment of tax as provided under this notification and the appellant opted for the deferment of tax as a stipulated under the said notification.

5. Further, the State Government vide notification no. F12(63)FD/Tax/2005-32 dt. 29.04.2006 granted exemption from payment of tax to the dealers who were eligible and were granted benefits of exemption, under various previous notifications (one of the notification number mentioned therein is related to the appellant, i.e. no. F4(68)FD/Tax Div/99-270 dated 24.01.2000) and resultantly, the appellant could have continued to take benefit of tax exemption w.e.f. 01.04.2006. This notification dated 29.04.2006 was amended on 22.01.2008 and the exemption as granted to the appellant vide notification dated 24.01.2000, was re-capped upwards to 175% of Fixed Capital Investment. Similarly, the notification number F4(68)FD/Tax/Div. /99-270 dated 24.01.2000, which is the original notification granting benefit to the appellant, was also amended on

  
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22.01.2008 through notification no. F12 (70) FD/Tax/Div./06-60 and condition no. 4 of the main notification was amended and the expression '130%' was substituted with '175%'. In this notification, it was not mentioned if this will be effective from the retrospective date i.e. 24.01.2000 or any other previous date.

6. The assessment for the year 2006-07 was finalized on 08.09.2008 (after issuance of the notification dated 22.01.2008 wherein the FCI limit was raised to 175%). In the said order, the assessing authority has calculated total quantum of benefit @ 175% of the FCI, and the same was arrived at Rs. 266.485 crore. After adjustment of the deferment availed during the year the balance carried forward to next year was Rs. 195.47 crore. Later, the assessing authority rectified the said assessment order under Section 33 of the Act on 29.04.2009, wherein the quantum of benefit was re-calculated at 130% of FCI instead of 175% as allowed in the original order. Resultantly, the balance carried forward on 31.03.2007 was also re-determined at Rs. 126.58 crore. Subsequently, the assessment orders for the year 2007-08 (RVAT & CST) were passed on 30.03.2010 and after adjusting the deferment benefit availed during the year i.e. Rs. 13.90 crore, the balance as carried forward to year 2008-09 (precisely for 01.04.2008), was Rs. 112.68 crore.

7. Learned counsel for the appellant argued that as the notification to amend the FCI was issued on 22.01.2008 and the original assessment order for the year 2006-07 was completed afterwards on 08.09.2008, therefore, the assessing authority was initially very much right to calculate the quantum of benefit at 175% of the FCI. So, the assessing authority has committed an error by rectifying the said order and revising the benefits downwards and again erred by passing the orders for the year 2007-08 on the same premise. He further submitted that the appellate authority too has erred in confirming the same.

8. He further argued that while finalizing the assessment orders for the year 2007-08 under the RVAT Act as well as the CST Act, the assessing

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authority treated the brought forward balance of available benefit at Rs. 126.58 crore, so the appellant was put to disadvantage by wrong application of the amendment as carried out by notification dated 21.01.2008. This reduction of quantum of benefit was contrary to the spirit of the amendment made vide notification dated 22.01.2008, therefore, it was requested to set aside the rectification order dated 22.04.2009 as well as the relevant calculations as arrived at in subsequent orders for the year 2007-08.

9. The learned counsel for the appellant further requested that it may be held that the notification dated 22.01.2008 would be effective from 24.01.2000 as such and the appellants be held to be entitled for 175 per cent benefit of cumulative quantum of tax of eligible fixed capital investment or alternatively, the notification dated 22.01.2008 be held to be effective from 01.04.2007 with the quantum of benefit @ 175% of FCI.

10. The Deputy Government Advocate appearing for the respondents, supported orders of the lower authorities and submitted that since the notification in question was issued on 22.01.2008 and there is no reference therein about retrospective effect of the same, therefore, the effect of the notification can be given only from 22.01.2008. He further requested to reject the appeals.

11. We have carefully gone through the arguments of both sides and perused the record. It is undisputed fact that the appellant was granted the exemption of tax vide notification no. F4(68)FD/Tax/Div./99-270 dated 24.01.2000. The relevant condition no. 3 of the said notification is reproduced hereunder:-

*"That the benefit under this notification shall be for a remaining period of 13 years from the date of first invoice of sale issued by the company of the soft drinks manufactured in any of its plants situated in the State of Rajasthan and this benefit shall be limited to the extent of 130% of total fixed capital investment, but the benefit shall not accrue beyond aforesaid period of 13 years even in respect of any subsequent addition of new products. "*

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It is also not in dispute that the quantum of the benefit available under the notification dated 24.01.2000 was amended only on 22.01.2008.

12. As intention of the government clearly seems to give benefit to appellant to the extent of 175% of the FCI during the period of eligibility, therefore, the short question before us for decision is that from what date this enhanced quantum of tax exemption/deferment which has been re-capped upwards to 175% of Fixed Capital Investment by notification dated 22.01.2008, shall come into effect. Though the overall quantum of exemption/deferment was available to appellant for 13 years from the date of first invoice of sale of the Soft drinks manufactured in any of its plants situated in the State of Rajasthan, but after switching over to deferment of tax in light of the notification dated 31.03.2016, it was further extended by five years or precisely, upto 29.03.2018 (date as mentioned in the assessment order).

13. It is worth mentioning that tax exemption was granted to the appellant vide notification dated 24.01.2000 and condition no. 3 of this notification which specifies the quantum of tax exemption upto 130% of fixed capital investment, was amended by notification dated 22.01.2008 wherein it was increased to 175% of Fixed Capital Investment.

14. However, in the present case it is inconsequential if it is considered effective from the date of issuance of the amended notification dated 22.01.2008 or from 01.04.2007 as prayed by the appellant, or as a matter of fact, from 05.04.2004 which is the date of its eligibility for the exemption, because the benefit of deferment of tax was available to the appellant from 01.04.2006 to 29.03.2018 and limit of 175% of FCI cannot be segregated into different time periods, i.e. before issuance of the amendment notification dated 22.01.2008 and afterwards. In our considered view, this overall limit of 175% of FCI shall flow seamlessly from the date of its entitlement i.e. 05.04.2004, till the period as stipulated in clause 3 of the notification dated 24.01.2000, as extendable/extended by virtue of notification dated 31.03.2006, otherwise, it will defeat very purpose of the amendment. Thus, on harmonious construction of these two notifications, it

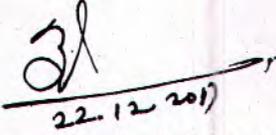


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is held that the limit of tax exemption/ deferment i.e. 175% of FCI, shall be available from 05.04.2004 and on switching over to deferment of tax w.e.f. 01.04.2006, the benefit would be available seamlessly within the stipulated quantum and period within ambit of the notification dated 31.03.2006.

15. Accordingly, the impugned appellate orders are set aside and orders of the assessing authority on this specific issue only, are also set aside. The assessing authority shall give the consequential effect to the appellant in light of this order.

16. Order pronounced.

  
22.12.2011  
(Omkar Singh Ashiya)  
Member

  
(K.L. Jain)  
Member