

**Rajasthan Tax Board, Ajmer**

Appeal No. 1496/2015/Jaipur

Appeal No. 1497/2016/Jaipur

M/s Rajasthan Rajya Vidyut  
Utpadan Nigam Ltd,  
Vidyut Bhawan, Jyoti Nagar,  
Jaipur

...Appellant

**VERSUS**

1. Commissioner,  
Commercial Taxes,  
Rajasthan, Jaipur
2. Commercial Taxes Officer,  
Special Circle -I, Kota
3. Commercial Taxes Officer,  
Special Circle -I, Jaipur
4. M/s Bharat Heavy Electricals  
Ltd, KTPS Shakatpura, Kota

.....Respondents

**D.B.**

**SHRI V. SRINIVAS, CHAIRMAN**

**SHRI OMKAR SINGH ASHIYA, MEMBER**

Present :

Shri D. Kumar, Advocate

for Appellant

Shri Anil Pokhrana,

Dy. Govt. Advocate

for Respondent no. 1, 2 & 3

Shri M.L. Patodi, Adv.

for Respondent no. 4

**Dated : 26/03/2018**

**JUDGMENT**

1. These appeals have been filed by the appellant dealer (hereinafter called the "appellant" or "RRVUNL"), against order of the Appellate Authority-II, Commercial Tax Department, Jaipur (hereinafter called the "appellate authority"), dated 12.08.2015, who rejected the appeals against order of the Commercial Taxes Officer, Special Circle-I, Kota, (hereinafter called the "assessing officer of BHEL") dated 15.07.2014





wherein he rejected the refund claim of the appellant was rejected on the ground that RRVUNL is required to submit the application in the Circle where it is registered. The details of the appellate orders, orders of the respondent no. 2 and the refund amount involved in the present matter, is as under:-

Appeal No.	A.Y.	Appellate Authority's order Details		Assessing Authority's order Details	
		Appeal No.	order dated	order dated	Refund amount under Dispute (Rs.)
1196/2015	2007-08	207/Appeals-II/RVAT/2014-15	12.08.2015	15.07.2014	49,87,77,206
1197/2015	2008-09	208/Appeals-II/RVAT/2014-15	12.08.2015	15.07.2014	9,94,80,815

2. Brief facts leading to the present appeals are that the appellant is a State Public Sector Company engaged in generation of electricity and during the course of its business activity has awarded various EPC projects as well as placed orders for supply of equipments to Bharat Heavy Electricals Ltd. (in short 'BHEL') for execution of its power plants at various sites in the State. Some of the goods have been supplied by BHEL from its manufacturing facilities situated outside the State and out of the payment made towards these supplies the appellant has deducted the tax at source (TDS), apparently in light of the provisions as contained in Rule 40(2) of the RVAT Rules, 2006 (hereinafter called the "RVAT Rules"). The respondent no. 2, i.e. assessing officer of BHEL, has though not found these outstate supplies to the appellant, to be liable to TDS in any manner but has refused to refund the amount wrongly deducted on these supplies from BHEL's offices/ manufacturing facilities situated in other States, and duly deposited in the exchequer as TDS. The respondent no. 2 who is assessing officer for BHEL, while finalizing the assessments for the year 2007-08 and 2008-09 has not given adjustment of the TDS so deposited by the appellant for which requisite

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certificates is Form VAT 41 were furnished and has instead held that in the instant case the refund can be issued by the officer having territorial jurisdiction over the unregistered dealers (URDs) or the Non-resident dealers (NRDs), as the case may be. However the amount of TDS erroneously deducted but duly deposited by the appellant, was actually paid back to BHEL by the appellant when the fact was brought to the notice by it.

3. For the year 2007-08 when the TDS amount was not refunded to BHEL then it preferred an appeal before the appellate authority who vide his order dated 08.09.2011 remanded the matter to AO to verify as to whether the BHEL has received back the payment of this TDS from RRVUNL or not. The assessing officer of BHEL while finalizing the assessment under remand has reached to a conclusion that supplies have been made by outstate units of BHEL, therefore, refund can be given to those units situated outside the State only and not to the assessee in the State of Rajasthan (as BHEL is registered in Kota). However, for the year 2008-09 the AO of M/s BHEL has not said anything in his order dated 29.09.2011 if any amount was refundable to it, instead seems to have levied tax on whole amount of the works contract. Later, the appellant approached the respondent no. 2 vide his letter dated 24.05.2014 to refund the amount wrongly deducted from the payments made to the BHEL's various units situated in other States and duly deposited into the state exchequer, but AO rejected the refund request for the year 2007-08 and 2008-09 citing the reason that as the applicant (appellant in this case) is not registered in Special Circle-I, Kota therefore, it has to apply in the Circle where it is registered and its case it is unregistered then to apply before the Commissioner, Commercial Taxes

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Department, Rajasthan, Jaipur (hereinafter referred as the "Commissioner").

4. Aggrieved of the AO's orders the appellant filed appeals before the appellate authority who rejected the same vide his order dated 01.05.2015 and 06.04.2016 respectively. Against these appellate orders, the instant appeals have been filed before the Rajasthan Tax Board under section 83 of the Act.
5. Learned counsel for the appellant submits that in the first place it is not in dispute that TDS amount was wrongly deducted from various payments made for the equipments supplied by various units of BHEL situated in other States namely; UP, Uttarakhand, Tamilnadu, Andhra Pradesh, Karnataka, M.P. etc. He further mentioned that TDS was deducted as "abundant precaution" due to ambiguity in the relevant provisions. In the assessment orders, this amount has been determined as refundable but out of sheer technicality as to who shall issue the refund, the process got stick up for years and the appellant is deprived of its own money. He further argues that directions may be issue to the respondents to issue the refund forthwith. He also informed that the appellant has filed a refund claim before the then assessing officer i.e. CTO Circle-N, Jaipur which remains undecided till date, and later on by virtue of transfer of the appellant's file to the respondent no. 3, this has to be decided by him now.
6. Learned advocate, appearing of the respondent no. 4 submits that TDS amount as deducted from payments made to BHEL's various units situated out of the State, was returned or paid back to the respective billers, therefore, the refundable amount should be refunded as per the prevailing law, but it must be refunded immediately and that he does not lay any claim over this refund.





7. Learned Deputy Government Advocate appearing for the respondent no. 1 to 3, supported order of the appellate authority as well as that of the assessing authority and submitted that only the officer having the jurisdiction can issue the refund and that respondent no. 2 has clearly mentioned this fact in this orders, therefore, the appellant must have applied before the appropriate officer having jurisdiction in such matters, therefore, the impugned orders are just & proper, therefore, he requests to reject the appeals.
8. We have gone through the submission of appellant as well as the respondents and perused the available record. Firstly, it is not in dispute that certain amounts were deducted from payments made to the respondent no. 4, i.e. BHEL, may be on the supplies made from its unit located in other states, and adjustment and resultant refund was not given in the relevant assessment orders as passed by respondent no. 2, reason being that the goods were supplied by various units of BHEL situated in other States and the payments were made to those units and not to the entity registered with the respondent no. 2, therefore, the refund has be issued in light of sub-section (3) of section 53 of the Act, by the appropriate officer having jurisdiction or in case of URD, the officer as directed by the Commissioner would be competent to issue the refund.
9. It is worth mentioning that in the assessment order for the year 2007-08, dated 30.07.2013 passed in compliance of the appellate order, the AO though acknowledged the deposit of TDS amount but did not give adjustment and consequential refund thereof, for jurisdictional issues only. On the other hand, in the assessment order for the year 2008-09, dated 29.09.2011, as passed by AC Circle-A, Kota, the tax has been imposed on the goods supplied by BHEL's units located in

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other States also, treating the same to have been appropriated by the BHEL's Rajasthan unit. However, we could not find any reference of refund or refundable amount *per se*, in the assessment order for the year 2008-09.

10. It is also not in dispute that the TDS amount erroneously deducted so, by the appellant has been paid back to BHEL as mentioned in the assessment order for the year 2007-08, dated 30.07.2013. So effectively, if any refund is to be given then it accrues to the appellant only.
11. In this regard, the provisions of sub section (5) of section 53 of the Act are abundantly clear that any refund has to be issued to the person who has suffered the incidence of tax or has paid the amount. It would be useful to peruse section 53 and the same is reproduced hereunder:-

**"53. Refund.-** (1) *Where any amount is refundable to a dealer under the provisions of this Act, after having duly verified the fact of "deposit of such amount", the assessing authority or the officer authorised by the Commissioner, shall in the prescribed manner refund to such dealer the amount to be refunded either by cash payment or by adjustment against the tax or other sum due in respect of any tax period.*

(2) *Notwithstanding anything contained in this Act, where a registered dealer files a return and claims refund on account of sales in the course of export outside the territory of India, the assessing authority or officer authorised by the Commissioner may require such dealer to furnish such documents as may be prescribed and after having been satisfied shall within thirty days from the date of such claim, grant the dealer a refund in cash.*

(3) *Where an amount or tax is collected from any person who is not registered under this Act and such amount or tax is not found payable by him, or where an amount in lieu of tax for any works contract is deducted in any manner by an awardee from any bill of payment to a contractor, who is not liable to pay tax under this Act, the amount so collected or deducted shall be refunded in the prescribed manner by the Assistant Commissioner or the Commercial Taxes Officer, as the case may be, in whose*

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*territorial jurisdiction such person or contractor ordinarily resides; and where such person or contractor does not reside in the State, then such refund shall be made by such officer as may be directed by the Commissioner.*

*(3A) Where any amount has been deposited wrongly or in excess, by a dealer and it is found that such amount is not payable or has been deposited in excess of the amount payable by the dealer for the tax period mentioned in the challan, the Commissioner or any officer as authorised by the Commissioner in this behalf shall direct the assessing authority to grant refund of the said amount in the manner as prescribed.*

*(4) Where refund of any amount becomes due to a dealer, he shall be entitled to receive, in addition to the amount of refund, simple interest at such rate as may be notified by the State Government with effect from 1st April of the year immediately following the year to which it relates upto the date of payment:*

*Provided that where the dealer has paid any amount of tax after the closing of the year and such amount is required to be refunded, no interest shall be payable for the period prior to the date of the deposit of such amount.*

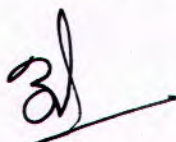
*\*[However, for the years 2007-08 and 2008-09, this sub-section as prevalent at that time, is read as under:*

*"(4) The refund amount under this section shall carry interest with effect from the date of its deposit at such rate as may be notified by the State Government from time to time."]*

***(5) Notwithstanding anything contained in this section or in any other law for the time being in force, only the dealer or the person, who has actually suffered the incidence of tax or has paid the amount, can claim a refund and the burden of proving the incidence of tax so suffered or the amount so paid shall be on the dealer or the person claiming the refund.***

*(6) Where tax is collected on any official or personal purchase by Foreign Diplomatic Missions or their Diplomats or by UN Bodies or their Diplomats, it shall be refunded to such person or Mission or Bodies, as the case may be, within thirty days of the receipt of the application, by such officer as may be authorised by the State Government in this behalf by notification."*

12. In the present matter the appellant has ultimately suffered the incidence of tax and has paid the amount back to BHEL, so it is held that the appellant is entitled to get the refund of the TDS








amount found refundable and the AO of the appellant i.e. respondent no. 3 in the instant appeals, shall deal with the matter and issue the refund.

13. It transpires from the whole saga that none of the authorities below have dealt the issue seriously, instead, have tried to pass the buck on technical grounds of jurisdiction or lack of it. It is indeed an appalling fact that the refund for the year 2007-08 which became due in the year 2009-10, has not been given even after eight years, causing definite financial hardship to the appellant. On the other hand, it seems the RRVUNL officials too were not proactive enough to get the refund and simply remained engaged in protracted litigation only. They must have approached the Commissioner who was competent enough to give directions to the appropriate officer to issue refund.
14. Since an inordinate delay has already been caused in the process and technicality thereof, therefore, we impart a time bound course of action to be followed by the appellant as well as the respondents, as under:
  - 1) The appellant shall appear before the respondent no. 3 to pursue their refund application and the respondent no. 3 shall do the preliminary processing of the application on 09.04.2018 and if need be, and in case any further information/document(s) is/are required, the same shall be obtained/procured within three days' time.
  - 2) The respondent no. 2 is directed to bring the relevant assessment record and sit with the respondent no. 3 in his office at Jaipur on 09.04.2018 and if any information/document is required to be submitted, he shall submit the same on that day itself.

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- 3) An executive of the respondent no. 4, i.e. BHEL, shall appear before the respondent no. 3 on 09.03.2018 and submit the required information/documents as deemed necessary within three days' time. The BHEL shall also furnish an undertaking before the respondent no. 3 that TDS amount as deducted by the RRVUNL on supplies made from the units situated out of the State of Rajasthan, has been received back from RRVUNL and that no claim whatsoever stands against the TDS amount deposited so, in the exchequer. The BHEL shall also furnish a 'No Objection Certificate' that it does not have any rightful claim over the refundable TDS amount and in case the same is refunded to RRVUNL, it does not have any objection.
  - 4) The respondent no. 3 after fulfilling all the formalities and by following the procedure as laid down in the Act/Rules, shall issue the refund latest by 30th April, 2018 and compliance report of the same shall be submitted by 7th May, 2018, before the Registrar, Rajasthan Tax Board, who shall place the matter before the appropriate Bench for consideration.
  - 5) The Deputy Commissioner (Adm) Zone-III, Jaipur who is controlling officer of respondent no. 3, shall overall supervise the matter and draw a summary note on the proceeding and day to day progress in the matter.
  - 6) If compliance is not made as directed, the respondent no. 2 and 3 shall appear in person before this Bench on 10.05.2018 at 10.30 AM at Ajmer.
15. This order shall apply for the refund case pertaining to the year 2007-08 only, because for the year 2008-09 we do not find any reference of refundable amount in the record placed before

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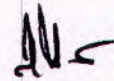


us, particularly the assessment order dated 29.09.2011, therefore, we refrain from giving any order for that year.

16. It is also clarified that we have gone into a very limited issue for consideration i.e. "issuance of refund by the appropriate authority" and not on the issue whether the amount is refundable or not, since that does not seem to be under dispute at least for the year 2007-08.
17. For review of the compliance and final disposal of the appeals, the the matter be placed before this Bench on 10.05.2018. The Registrar, RTB is directed that copy of this order be served upon all concerned within three working days of pronouncement of this order.
18. Accordingly, the matter is disposed off as above.
10. Order pronounced.



(Omkar Singh Ashiya)  
Member



(V, Srinivas)  
Chairman