

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT**  
**JAIPUR BENCH, JAIPUR**

**ORDER**

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**S.B. Sales Tax Revision No. 672/1999**

M/s. National Engineering Limited (Now National  
Engineering Industries Limited), Jaipur

***Versus***

The Commercial Taxes Officer, Special Circle-3,  
Jaipur

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Date of order

::

July 31, 2007

**PRESENT**

**HON'BLE DR. JUSTICE VINEET KOTHARI**

Mr. J.N. Sharma for the petitioner-assessee

Mr. Brij Sharma on behalf of Mr. R.B. Mathur for the respondent-  
Revenue

**BY THE COURT:**

1. This revision is directed against the order of the Tax Board

dated 26.05.1997.

2. Learned counsel for the assessee Mr. J.N. Sharma limited his prayer to remand of the case to the first appellate authority because he submitted that the additional ground of appeal raised before the learned Deputy Commissioner (Appeals) was not entertained by him as time barred, though there is no prescribed limitation for filing any additional ground of appeal before the said appellate authority. He also drew the attention of the court towards para 5 of the impugned order of the Tax Board dated 26.05.1997, where on the issue of set-off, the Tax Board observed that both the parties were agreed on this issue on the order of the learned DC (Appeals). He has filed his own affidavit in support of this revision petition to the effect that he argued these appeals before the Tax Board and he never conceded before the Tax Board nor he suggested that the issue of set-off does not require any further consideration by the Tax Board.
3. No counter to the said affidavit has been filed from the side of the Revenue, nor the learned counsel for the Revenue seriously opposes the prayer for remand of the case to the appellate authority.
4. Learned counsel for the assessee further submits that assessee

was entitled to a set-off under the Notification dated 06.05.1986 (S.No. 625 of J.K. Jain's Book Vol.2).

5. Be that as it may, it appears to this court that DC (Appeals) was not justified in not allowing the assessee to raise additional ground of appeal regarding set-off of taxes under a particular notification. Being a fact finding authority and sitting as first appellate court, there was no prohibition on the exercise of jurisdiction by the said appellate authority to entertain the said additional ground of appeal. No limitation as such has been prescribed in Section 13 of the RST Act, 1954 relating appeals before the learned DC (Appeals).

6. In view of this, the impugned order of the Tax Board dated 26.05.1997 to the extent of para 5 and the order of the learned DC (Appeals) dated 16.07.1993 are set aside and the appeal is restored to the learned DC (Appeals) to decide the same afresh after entertaining the additional grounds of appeal filed before him and allowing the assessee to make his submissions with regard to the claim of set-off.

7. With these observations, this revision petition is disposed of.

**(Dr.VINEET KOTHARI),J.**

**Pramod**

Item No. 67