

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL, DELHI
Sh. Narinder Kumar, Member (Judicial)

Review Petition No.03/ATVAT/2015

Date of Decision : August 13th 2021

M/s. Haryana Traders Pvt. Ltd.,
4035, Chawri Bazar,
Delhi – 110006.

..... Petitioner-Applicant

v.

Commissioner of Trade & Taxes, Delhi Respondent

Counsel representing the Appellant : Sh. A.K. Rai.

Counsel representing the Revenue : Sh. M.L. Garg.

ORDER

1. This order is to dispose of review application filed by the dealer, who was appellant in appeal Nos. 1249-1250/ATVAT/2013, titled as M/s Haryana Traders (P) Ltd. v. Commissioner of Trade & Taxes, Delhi. Both the appeals were dismissed by the Appellate Tribunal, vide detailed order dated 25/2/2015.

2. Learned counsel for the petitioner-applicant has submitted that in para No. 6 of the order, the Appellate Tribunal recorded wrong fact i.e. that VATO of Enforcement-I Branch had issued notices to the appellant *to explain the variation in the stock*, as

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actually the notice issued by the VATO of Enforcement-I Branch was *for production of documents* specified therein.

3. After going through the notice issued by the VATO — Enforcement-1 Branch, it appears that the same was issued calling upon the appellant to produce documents and the words to explain the variation in the stock do not find mentioned therein.

In para-6, the Appellate Tribunal was referring to the fact of conducting of survey, which had led to variation in the stock, forwarding of the report to VATO of Enforcement-1 Branch for re-assessment, and issuance of the said notice. The discussion finds mentioned in para-7 of the order passed by the Appellate Tribunal. When a notice was undisputedly issued by the VATO, in the given facts and circumstances, and the Appellate Tribunal, recorded the said fact only while simply narrating the facts, it cannot be said to have led to any wrong opinion, after discussion on merits, to the prejudice of the applicant-appellant.

4. Learned counsel for the petitioner has then referred to para-2 of the order passed by the Tribunal and submitted that it has been wrongly recorded therein that “learned VATO observed that dealer could not file reply of total variation of Rs. 56,57,635/-”.

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On going through the memorandum of appeal, it is found that this fact has appeared while narrating facts and that too as per case of the appellant itself as available in para no. 4. Therefore, it cannot be said that this averment of the appellant has been wrongly recorded by the Appellate Tribunal, in para-2 of the order.

5. Another submission by learned counsel for the petitioner is that before the learned OHA, the appellant had submitted explanation regarding difference in stock, with a list, and this fact was also alleged in the memorandum of appeal, but this fact escaped the notice of the Appellate Tribunal, and as such the order requires to be reviewed.

6. It is true that in the memorandum of appeal, the appellant alleged that difference in stock was explained and list of closing stock as on 29/3/2013 and 31/3/2013 was submitted to the learned OHA, but the learned OHA rejected the contention of the objector on the point of variation in stock.

7. In para-7 of the order, the Appellate Tribunal observed that the submission made by the appellant with regard to variation in stock was nothing, but an afterthought. Appellate Tribunal was of this view having regard to the fact that a certificate was appended by Sh. Ram Avtar Gupta, Director of the appellant (present at the time of survey) to the effect that stock inventory of goods was prepared before him and that no stock was counted

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twice or left uncounted. Therefore, it cannot be said that the Appellate Tribunal did not take into consideration the fact of filing of documents, including list submitted before the OHA on the points of variation in stock.

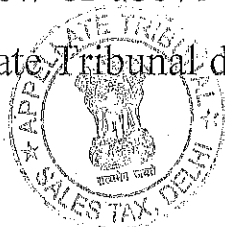
8. Last submission made by learned counsel for the petitioner is that separate appeal was filed by the appellant challenging imposition of penalty but the Appellate Tribunal did not adjudicate the challenge to the order of imposition of penalty at all, while disposing of the appeals vide common order.

Learned counsel for the Revenue admits that challenge to the order of penalty passed by Learned OHA, has not been adjudicated by the Appellate Tribunal while disposing of the appeals.

When a perusal of order dated 25/2/2015 reveals that there is no adjudication as regards the challenge of the appellant to the order of penalty, same needs to be adjudicated for complete adjudication of the matter in dispute. So, there is merit in this submission on behalf of the petitioner.

09. In view of the above discussion, this review petition is allowed only for adjudication as regards challenge to the order of penalty passed by learned OHA.

In view of above discussion, the detailed order passed by the Appellate Tribunal dated 25/2/2015, as regards the remaining



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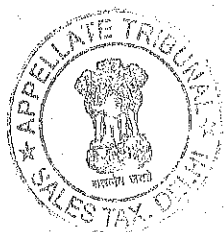
points agitated by learned counsel for petitioner, does not call for review.

10. Accordingly, appeal no. 1250/13 i.e. challenging the order of penalty passed by learned OHA is ordered to be restored to its original number. Said appeal file be listed on 19/8/2021 for final arguments.

11. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : August 13, 2021



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(Narinder Kumar)
Member (J)

Appeal No. R-03/ATVAT/2015/744-751

Dated: 17/8/21

Copy to:-

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| (1) VATO (Ward-107) | (6) Dealer |
| (2) Second case file | (7) Guard File |
| (3) Govt. Counsel | (8) VATO (L&J) |
| (4) Secretary (Sales Tax Bar Association) | |
| (5) PS to Member (J) for uploading the judgment on the portal of DVAT/GST, Delhi - through EDP branch. | |




PS/ PA to Member (A)