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BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL, DELHI

Sh. Narinder Kumar, Member (Judicial) and Sh. Rakesh Bali, Member (Administrative)

Review App. No. 4.

Appeal No.157-169/ATVAT/17-18

Date of Decision: 24/8/2021

M/s. ICE Mobile Network Systems (P) Ltd.,
D-13/1, Model Town-II,
New Delhi – 09.

..... Applicant

v.

Commissioner of Trade & Taxes, Delhi.

..... Respondent

Counsel representing the Applicant : Sh. R.S. Gupta,
Counsel representing the Revenue : Sh. S.B. Jain

ORDER

1. This order is to dispose of review application No.4 filed by M/s ICE Mobile Network Systems (Pvt. Ltd.). The said company had filed appeals No. 157-169/ATVAT/17, pertaining the tax period 2010-2011.

2. Vide judgment dated 3.5.18, this Appellate Tribunal disposed of all the 13 appeals, while observing in the manner as:

“The impugned order dated 21.7.2017, passed by Ld. OHA, deserve no interference and they are accordingly upheld and the appeals are dismissed and appellant is directed to appeal before the VATO (Ward)

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on 4.6.2018. Concerned VATO is directed to reframe the assessment after giving an opportunity of hearing to the appellant.”

3. On 11.6.2018, the appellant filed present review application seeking a review of the judgment dated 3.5.2018.

4. Brief facts of the case are that the appellant is a registered dealer engaged in business of purchase and sale of mobile handsets/phones and their accessories. Its business affairs were subjected to audit for the tax period 2010-2011, by VATO of VAT (Audit branch), u/s 58 of Delhi Value Added Tax Act 2004 (hereinafter referred to as the Act).

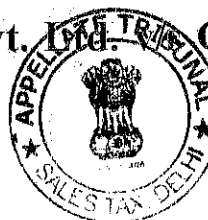
5. Said audit led to issuance of notice of default assessment of tax, interest & penalty on 31.12.13 by the said VATO, u/s 32 & 33 of the Act. At the same time, additional demands of tax and interest were also raised and penalties were imposed by the said VATO, for all the 4 quarters of the said tax period, u/s 9 (2) of Central Sales Tax Act, 1956 (Hereinafter referred to as CST Act). Feeling dissatisfied with the said notice/assessment orders, appellant filed objections u/s 74 (1) of DVAT Act and section 9 (2) of CST Act.

6. Special Commissioner-Ld.OHA disposed of the objections. Feeling aggrieved, the appellant filed aforesaid 13 appeals before the Appellate Tribunal. As noticed above, all the appeals were dismissed.

7. In the review application, Ld. Counsel for the applicant has taken up the ground that on behalf of the appellant reliance was placed on decisions in “Capri Bathaid Pvt. Ltd. Commissioner

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of Trade and Taxes, Delhi'[(2014) 52 DSTC 617 (Delhi) as well as in "Teleworld Mobiles Pvt. Ltd. v/s Commissioner of Trade and Taxes"[(2015) 53 DSTC 347 (Delhi)], while challenging the audit on the ground that same was conducted without proper authorization in prescribed Form DVAT-50, but no credence or proper consideration was given to the said decisions.

8. Another ground put forth in the review application is that while dealing with arguments on behalf of the appellant, the Appellate Tribunal relied on decisions in **HG International v/s Commissioner of Trade & Taxes**, ST appeal No. 63 of 2014, by our own Hon'ble High Court, but the Appellate Tribunal did not even refer to the decision in Capri Bathaid's case (supra).

9. Let's see as to what was observed by Learned Appellate Tribunal while disposing of the appeals of the appellant-applicant. The relevant portion reads as under:

"Assessment orders dated 31/12/2013 have been assailed firstly, on the ground that default assessment orders passed by ld. VATO (Audit) are without jurisdiction as the VATO (Audit) who assessed the appellant had not been issued the proper authority in form DVAT-50 as required under the provisions of DVAT Act r/w Rules framed there under and as such the orders passed are illegal and un-sustainable. In this regard, appellant has heavily relied upon the judgment by Hon'ble Delhi High Court in the cases of Capri Bath Aid (P) Ltd. (supra) and Teleworld Mobiles (P) Ltd. (supra). According to appellant's ld. counsel, it goes to the root of appeals, hence impugned assessment orders are liable to be set-aside."



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Now the question arises, whether the assessment made by the VATO (Audit) is valid when appellant comes under the jurisdiction of Ward-70 of Trade & Tax Department of the Govt. of NCT of Delhi. The similar issue came for decision before the Hon'ble Delhi High Court in St. APPL No. 63/2014 titled H.G. International Vs. Commissioner of Trade and Taxes Delhi, wherein following question of law was framed.

"2. The only question of law framed by the order dated 4th August 2016 is "whether the VATO (Audit) can pass an assessment order in terms of the Delhi Value Added Tax Act, 2004?"

Hon'ble High Court deciding the issue vide orders dated 16/8/2017 observed as under :-

"11. The powers under section 58 can be delegated by the Commissioner to named officers in terms of section 66(1) r/w section 68 of the DVAT Act. At that relevant time when the audit of the Appellant took place, there was an order dated 31/10/2005 issued by the Commissioner, VAT u/s 68 of the DVAT Act r/w Rule 48 of the Delhi Value Added Tax Rules, 2005 ('DVAT Rules') delegating his powers under various provisions of the DVAT Act to an officer of a particular designation.....

"12. At the time when the impugned orders of default assessment of tax, interest and penalty were passed by the VATO (Audit) in the present case, the above order was in force. It is a validly issued order and is not a subject matter of challenge in the present proceedings. The above order delegates to the VATO all the powers of an auditor-under section 58 of the DVAT Act of (a) confirming the assessment under review or (b) serving a notice of assessment or re-assessment.

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“13. Consequently, in the present case, the impugned orders of default assessment of tax, interest and penalty issued by the VATO (Audit) were validly issued and were within his powers and jurisdiction in terms of section 58(1) r/w section 58(4), and section 66 r/w section 68 of the DVAT Act.”

13. In the present case also as the order dated 31/10/2005 was still effective and the audit was conducted regarding 2010-11, hence in the light of the above judgment and provisions of law, VATO (Audit) had jurisdiction to audit the business affairs of the appellant and issue notices of assessment of tax, interest and penalty.”

10. From the above paragraphs of the judgment passed by the Appellate Tribunal, it cannot be said that the Appellate Tribunal did not consider the decisions in Capri Bath Aid (P) Ltd. (supra) and Teleworld Mobiles (P) Ltd. (supra). So, there is no merit in the contention of learned counsel for applicant in this regard.

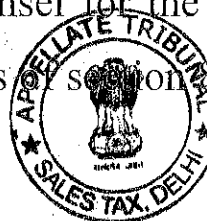
11. As regards reference to HG International's case, Appellate Tribunal is empowered to refer to the law applicable for decision of a case. In case, the appellant felt aggrieved by the decision of the Appellate Tribunal, appellant could resort to lawful remedy. But, on this ground present review petition is not maintainable.

12. In para (vi) of the grounds for review, applicant has now referred to more decisions on the point of challenge to audit which is conducted without holding due authorisation. These decisions being cited in this revision petition cannot be considered.

13. Another ground put forth by Ld. Counsel for the applicant is that the Appellate Tribunal applied provisions of section 80 of DVAT

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Act to counter the claim of the appellant, but section 80 actually pertains to minor mistakes and as such the Appellate Tribunal erred in applying this provision of law.

On this point, the Appellate Tribunal observed in the manner as:

“14. The appellant has also assailed the assessment orders passed by VATO (Audit) on the ground that assessing authority was not holding proper authority / authorization in the prescribed form DVAT-50 from the then Id. Commissioner or the person empowered by him in that behalf, enabling him to carryout audit of business affairs of the appellant u/s 58 of the DVAT Act. Similar issue arose before this Tribunal in the case of M/s. Amrit Auto Industries (Appeal No. 278-289/ATVAT/2014-15), the following para of which is relevant for disposal of present appeals also-

Para-18. Although the Revenue has not shown the Authority under DVAT-50 to have been issued by the Commissioner, nevertheless the VATO (Audit) in terms of provisions of section 59(2) of the DVAT Act had the power to make assessment and the technical lapse even if it exists due to non issuance of the authority in DVAT-50 is protected under section 80 of the DVAT Act.

15. In the light of above orders and provisions of section 80 assessment orders framed by the Id. VATO (Audit) cannot be said to be invalid on the ground that VATO (Audit) was not issued DVAT – 50 by the Id. Commissioner. It is also not clear from the record that appellant had demanded authorization in DVAT-50 from the VATO (Audit) before commencement of audit proceedings by the Id. VATO (Audit).



In view of the above observations and findings, if the applicant felt aggrieved, he could resort to lawful remedy, but not by way of review, as it cannot be said to be a case of error on the face of the record.

14. It may be mentioned here that in the review application another ground was put forth that the inter-state sales and central transactions are beyond the purview of audit as provided u/s 58 of DVAT Act and that accordingly, such transactions are not amenable to audit by state officers, but in the course of arguments on the review application, this point has not been agitated at all by learned counsel for the applicant.

15. No other argument has been advanced by learned counsel for the applicant.

In view of the above discussion, this review petition is hereby dismissed.

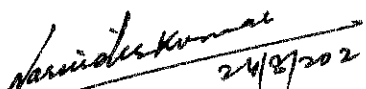
16. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 24/08/2021




(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Appeal No. 157-169/ATVAT/17-18/798-805

Dated: 24/8/21

Copy to:-

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| (1) VATO (Ward-) | (6) Dealer |
| (2) Second case file | (7) Guard File |
| (3) Govt. Counsel | (8) AC(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. | |




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