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BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI
Sh. Narinder Kumar: Member (Judicial) & Sh. Rakesh Bali, Member (Administration)

R-20/ATVAT/16

In Appeal No. 130-131/ ATVAT/13

Date of order-05/10/21

M/s. Public Goods Transport Co.,
4098, Naya Bazar,
Delhi – 110 006

.....Applicant

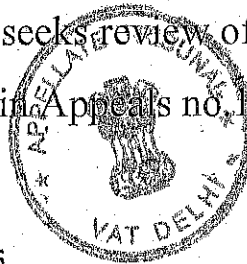
v.

Commissioner of Trade & Taxes, Delhi.Respondent

Counsel representing the Petitioner-applicant : Sh. M.L.Garg
Proxy Counsel representing the dealer : Sh. Yuvraj.

ORDER

1. Present review petition has been filed by Revenue under Regulation 24 of Delhi VAT (Appellate Tribunal) Regulation, 2005 read with section 76 (13) of DVAT Act, 2004.
2. By way of this petition, revenue seeks review of order dated 24-11-2016 passed by this Tribunal in Appeals no. 130-131/13.



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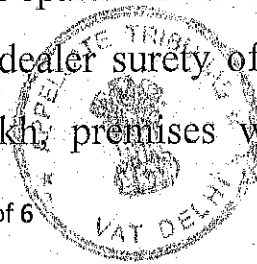
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3. Vide order dated 24-11-2016, the Tribunal allowed both the two appeals No.130-131/13 and thereby set aside the impugned order dated 25-02-2013 passed by Ld. OHA/Ld. Additional Commissioner (III-IV), and held the dealer-appellant M/S. Public Goods Transport Company entitled to refund of tax and penalty paid in accordance with law.
4. The matter in dispute in appeals pertained to notices of default assessment of tax and penalty issued by the Assessing Authority on 22-11-2012, under section 32 and 33 read with Section 86(19) of DVAT Act. The objections filed by dealer against the said notices were disposed of vide order dated 25-02-13 passed by Ld. OHA whereby the demands framed by Assessing Authority were upheld.
5. The brief facts of the case as available in Para no.2 of the judgement dated 24-11-2016 read as under:-

“2. Facts of the case briefly stated are that the appellant is a transporter engaged in transportation of goods by road. Premises of the appellant were searched under section 60(2) of the DVAT Act by survey team of the Department and were sealed on 01.11.2012. On furnishing of dealer surety of Rs 2.5 lakh and bank guarantee of Rs 2.5 lakh, premises were desealed on



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09.11.2012 and inventory of the goods was prepared by the survey team of the Department. Simultaneously, 52 GRs along with certain invoices were also seized from the said premises of the appellant and goods of the GRs were directed to be kept in safe custody on superdari till verification of the GRs was completed by the department and thereafter, on checking the bills of these GRs/goods finding that a number of dealers whose goods were being transported by the appellant, were not paying tax for the last two years and also that in some cases even the TIN numbers mentioned were not correct and thus the assessing authority of the Special Assessment Cell passed the default assessment order dated 22.11.2012 creating a demand of tax and interest.”

6. Ld. Counsel for the Revenue-Petitioner-Applicant submits that at the time of final arguments, he had also advanced arguments on behalf of the revenue, but his contentions do not find mention in the order dated 24-11-2016, and as such the said order deserves to be reviewed.
7. In support his submission Ld. Counsel has relied on decisions in **Meera Bhanja (Smt) v Nirmala Kumari Choudhury (Smt)**, (1995) 1 Supreme Court Cases 170, and **Jia lal kapur v UOI and Another**, (2016) 1 High Court Cases (Del) 347.



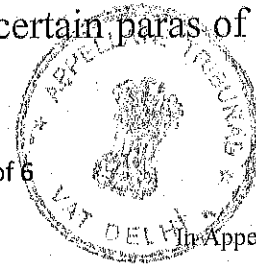
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8. In the order dated 24-11-2016, the Hon'ble Members of the Tribunal observed that they had carefully considered the record, after having heard the counsels of the parties. Perusal of the order further reveals that case of the respective party was considered while taking into consideration the relevant provisions of DVAT Act, as regards levy of tax and imposition of penalty. It was clearly observed that it was not the case of the revenue that the appellant had not allowed inspection or not furnished the information asked for.
9. When we have enquired from the Ld. Counsel for the Petitioner if any written submission/arguments were put-forth by him at the time of final arguments, the response is in negative.
10. In the given situation, it cannot be said as to which of the submission/arguments put-forth by the Ld. Counsel for the petitioner/revenue was not considered by Hon'ble Members while deciding the appeals.
11. Ld. Counsel for the Petitioner-Applicant has tried to challenge the findings recorded by the Tribunal on the point of levy of tax and penalty while referring to certain paras of the judgement on

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these points. Ld. Counsel submits that the findings in the order are wrong.

12. It is well settled that review proceedings are not by way of appeal, as observed by Hon'ble Apex Court in **Meera Bhanja's case (supra)** relied on by counsel for the petitioner himself.

As further observed in the said decision, review petition has to be entertained only on the ground of error apparent on face of record.

Ld. Counsel for the petitioner - applicant has not been able to point out any error apparent on the face of record.

13. As observed in **State of West Bengal v. Kamal Sengupta** (2008) 8 SCC 612, relied on by our own Hon'ble High Court in **Jia Lal Kapur v UOI** and Another's case (supra) cited by Ld. Counsel for the petitioner, the term 'mistake or error apparent' by its very connotation signifies an error which is evident per se from the record of the case and does not require detailed examination, scrutiny and elucidation either of the facts or the legal position. If an error is not self-evident and detection thereof requires long debate and process of reasoning, it cannot


be treated as an error apparent on the face of the record for the purpose of Order 47 Rule 1 CPC or Section 22(3)(f) of the Act.

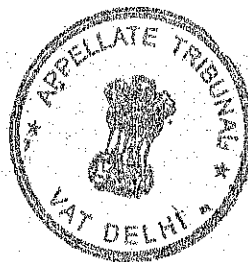
Hon'ble Court further observed that to put it differently an order or decision or judgment cannot be corrected merely because it is erroneous in law or on the ground that a different view could have been taken by the court/tribunal on a point of fact or law. In any case, while exercising the power of review, the court/tribunal concerned cannot sit in appeal over its judgment/decision.

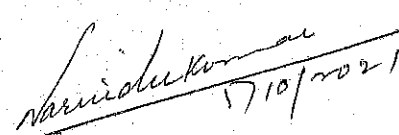
14. In view of the above discussion, do not find any merit in this review petition. The same is hereby dismissed.
15. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 5/10/2021


(Rakesh Bali)
Member (A)




(Narinder Kumar)
Member (J)

Review NO -> 20/ATVAT/16
Appeal No. 130-13/ATVM/13 / 1304-11

Dated: 6/10/21

Copy to:-

- (1) VATO (Ward-) Special Cell
- (2) Second case file
- (3) Govt. Counsel
- (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.
- (6) Dealer
- (7) Guard File
- (8) AC(L&J)
- (9) Commissioner (T&T)



REGISTRAR

