

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

Rev. No. 222/ATVAT/2021

In Appeal No : 173-174/ATVAT/2019

Date of Order : 29/11/2021

M/s. Julta & Co.
269, Rajouri Apartments,
Rajouri Garden,
New Delhi – 110027.

..... Applicant

v.

Commissioner of Trade & Taxes, Delhi

..... Respondent

Counsel representing the Applicant

: Sh. Rohit Gautam.

Counsel representing the Revenue

: Sh. P. Tara.

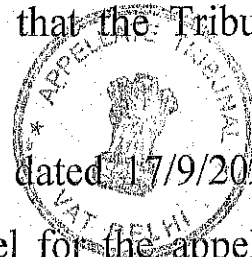
ORDER

1. This order is to dispose of application filed by the dealer for review of order dated 17/9/2021 passed by this Tribunal in appeals No. 173-174/ATVAT/2019.
2. The aforesaid appeals were filed by the dealer company challenging order dated 22/12/2020 passed by Addl. Commissioner - learned Objection Hearing Authority (OHA), whereby the objections filed by the dealer were dismissed and

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two notices of default assessment framed by the Assessing Authority on 18/6/2018 were upheld.

3. Vide notices dated 18/6/2018, the Assessing Authority had allowed certain exemptions, but at the same time he levied tax, interest by way of notice of default assessment under section 32 of Delhi Value Added Tax Act, 2004, (here-in-after referred to as the Act) and also imposed penalty u/s 86(10) read with section 33 of DVAT Act.
4. Arguments heard on the review application. Record perused.
5. Learned counsel for the applicant submits that the Tribunal fell in error by not taking into consideration the decision in M/s. Jatinder Mittal Engineers and Contractors vs. Commissioner of Trade and Taxes, MANU/DE/7574/2011 and the decision in State of MP & Ors. vs. Shyama Charan Shukla, 1990 79 STC 439 SC and as such the review application deserves to be allowed.
6. Learned counsel for the Revenue has vehemently submitted that none of the two decisions, were cited by learned counsel for the appellant at the time he argued the two appeals on merits and as such it cannot be said that the Tribunal has committed any error on this point.
7. We have gone through our judgment dated 17/9/2021. The argument advanced by learned counsel for the appellant, in



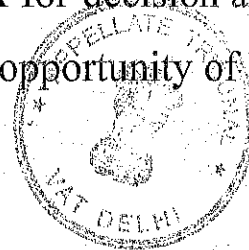
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the appeals on merits was that the learned OHA had not allowed full exemption to the dealer – appellant even though the dealer had filed copies of all ledger accounts, original cash voucher and original purchase bills with other expenses bills. In support of this submission, learned counsel had referred to copy of letter dated 7/10/2020 available on record.

When learned counsel for the Revenue did not dispute filing of copy of letter dated 7/10/2020 and annexures thereto, before learned OHA, we observed that the learned OHA ought to have dealt with the said documents produced during hearing on objections and then to have recorded findings. In this situation, we had no option but to order for remand of the matter to learned OHA for decision afresh after taking into consideration the relevant material, out of documents produced vide letter dated 7/10/2020, and also keeping in view a provisions of section 5(2) of the Act and 3(1) of DVAT Rules.

Consequently, both the appeals were disposed of and while setting aside the impugned orders dated 22/12/2020, the matter was remanded to ~~but~~ learned OHA for decision afresh, after affording to the dealer a reasonable opportunity of being heard.



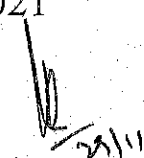
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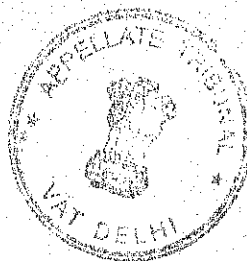
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8. Since the learned counsel for the appellant – dealer had not referred to any of the aforesaid two decisions, we had no occasion to refer the same or appreciate/ applicability of the law laid-down therein.
9. Learned counsel for the dealer applicant submits that even if the matter has been remanded to learned OHA for decision afresh, dealer has the apprehension that the learned OHA may again impose penalty.
- In this regard, suffice it to state that no application for review lies on the ground of any such apprehension in the mind of the dealer, regarding the order that may be passed on remand of the matter.
10. In view of the above discussion, and finding no merit in this review application, same is hereby dismissed.
11. File of this review petition and the record of the appeals 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 : 29/11/2021


(Rakesh Bali)
Member (A)




(Narinder Kumar)
Member (J)

Review No. 222/ATVAT/21/1546-83
Appeal No. 173-174/ATVAT/19

Dated: 6/12/21

Copy to:-

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| (1) VATO (Ward-110) | (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. | |
| (9) Commissioner (T&T) | |


REGISTRAR

