

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

Review Application No.13/2018

Appeal No. 237/ATVAT/17-18

Date of Order: 29/12/2021

M/s Vortex Rubber Industries Pvt Ltd.

½ 1557-1558, Mezanine Floor,

Church Road, Kashmere Gate,

New Delhi-110006

.....Appellant-applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. H.C.Bhatia.

Counsel representing the Revenue : Sh. S. B. Jain.

JUDGMENT

1. This order is to dispose of review petition filed by dealer-appellant, with prayer for review of order dated 25/06/18 passed by this Tribunal in Appeal No. 237/ATVAT/17.
2. The appeal was filed by the dealer-applicant challenging order dated 16/10/17 passed by Ld. OHA-Joint Commissioner. Vide order dated 16/10/17, Learned OHA disposed of objections

Narinder Kumar
29/12/21

Rakesh Bali

filed by the dealer – assessee against the assessment framed on 11/04/16.

3. The dealer – applicant is a dealer registered under DVAT Act. Vide notice of Default Assessment of Tax and Interest under CST Act, Assessing Authority imposed tax to the tune of Rs.9,59,564/- with interest of Rs.1,75,876/-, for the tax period 3rd Quarter 2014, on the basis of information received from Assistant Commissioner (BIU) vide letter dated 01/02/16. Said letter was accompanied by copy of letter dated 09/11/15 from the Assistant Commercial Tax Officer Ward –II, Circle, Jaipur.

The information communicated to the Assessing Authority – VATO (Ward 65), Delhi was to the effect that M/s. Sunil Kumar and Sons had obtained registration by deliberately using false documents and further that online forms issued to the said concern were cancelled.

One of the said forms was bearing No. RJ/C/2014-15-000883267, which is stated to have been issued to the dealer-applicant herein.

Since the dealer – applicant failed to furnish any explanation to the Assessing Authority despite issuance of notice u/s. 59(2) of DVAT Act, as regards the cancelled C Forms, the

Assessing Authority disallowed the concessional sale against the said form and levied tax @ 12.5% .

Feeling aggrieved by the said assessment, the dealer – applicant filed objections u/s. 74 of DVAT Act.

Ld. OHA dismissed the objections filed while observing that there was no reason to accept the same in view of the material available on record. That is how, the dealer – applicant filed appeal No. 237/17 against the order passed by Ld. OHA.

4. Tribunal held that the appeal was devoid of any merit. Accordingly, the order dated 16/10/17 was upheld and appeal was dismissed.
5. Review of the judgment passed by the Tribunal has been sought on the following grounds:-

- a. The dealer-applicant is having proof in the form of GRs in support of the fact that inter-state sales made by the applicant were made prior to the year 2015, and that the dealer can produce the same;

that the Tribunal did not take note of complete facts of decision in **Mohinder Singh Gill and Anr. V. The Chief Election Commissioner, New Delhi and Ors. AIR 1978 SC 851**, and that the arguments put-forth on behalf of the

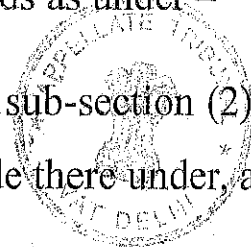
Revenue was against the decision of the Hon'ble Apex Court;

- b. That ~~that~~ while inter-state sales were made by the dealer in the year 2014, the letter stated to have been received from Rajasthan is of the year 2016, and that cancellation of C-Forms issued against inter-state sales was contrary to the decision of Hon'ble Apex Court in **State of Maharashtra v. Suresh Trading Company (1998) 109 STC 439**;
- c. That at the time of inter-state sales to the purchasing dealer of Rajasthan, the dealer-applicant was not aware of malafide activities alleged / intimated by the Government of Rajasthan, and as such the dealer – applicant could not be penalised.

- d. That the Tribunal did not provide opportunity to the counsel for the dealer – applicant at the time of hearing on arguments.

6. As regards review of an order, Regulation 24 of Delhi VAT (Appellate Tribunal) Regulations, 2005, reads as under –

- (i) Subject to the provisions contained in sub-section (2) of section 76 of the Act and the rules made there under, any



29/11

29/11

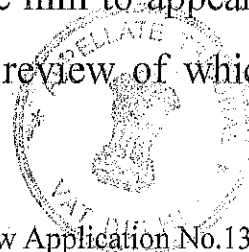
person considering himself aggrieved by an order of the Tribunal and who, from the discovery of new and important matter or evidence which after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of the order made against him, may apply for a review of the order within sixty days from the date of service of the order:

Provided that the Tribunal may at any time, review the order passed by it suo motu also for reasons to be recorded by it in writing.

- (ii) Where it appears to the Tribunal that there is no sufficient ground for review, it shall reject the application.
- (iii) Where the Tribunal is of opinion that the application for review should be granted, it shall grant the same:

PROVIDED that-

- (iv) no such application shall be granted without previous notice to the opposite party to enable him to appear and be heard in support of the order, a review of which is applied for; and



Handwritten signature and date 28/11

Handwritten signature

(v) no such application shall be granted on the ground of discovery of new matter or evidence which the applicant alleges was not within his knowledge, or could not be adduced by him when the order was made, without strict proof of such allegation.

7. As regards observations made by the Tribunal that to get benefit of concessional rate of tax, applicant has to prove first movement of goods from one State to another, which is a sine qua for such type of transactions, Ld. Counsel for the applicant has referred to Para 8 and 14 of the judgment passed by this Tribunal to point out that this submission was put-forth on behalf of the Revenue for the first time and so dealt with by the Tribunal. The contention is that the Tribunal should not have dealt with this new point raised by the Revenue, when the revenue authorities did not so observe in their respective order.

Further, it has been contented that before making observations on this point, the Tribunal should have provided an opportunity to the dealer-applicant to lead evidence, but no such opportunity was granted.

Another contention raised by the Ld. Counsel for the applicant is that decision in **Commissioner of Sales Tax v. Hari Ram**

Oil Co. 1992 (Vol.87) Sale Tax Cases 495, was cited on behalf of the dealer before the Tribunal but this decision was not taken into consideration by the Tribunal while disposing of the appeal.

Learned counsel for the applicant has contended that validity of an order is to be judged by the reasons recorded in the order and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. It has also been contended that cancellation of C-forms cannot have retrospective effect. In support of these submissions, Ld. Counsel for the applicant-appellant has relied on following decisions :—

- (i). **Commissioner of Commercial Taxes & Ors v. Dr. S.D. Debnath Homoeopathic Laboratory Pvt Ltd.** (1993) 89 STC 498(WBTT);
- (ii) **Mohinder Singh Gill & Anr. v. The Chief Election Commissioner, New Delhi** AIR 1978 Supreme Court 851;
- (iii) **State of Maharashtra v. Suresh Trading Company** (1996) 109 STC 439 (SC);
- (iv) **Jain Manufacturing (India) Pvt Ltd v. The Commissioner Value Added Tax & Anr.** (2015) 53 DSTC 181 (Delhi);

[Handwritten signature]
29/11

[Handwritten signature]



v. **Combined Traders v. Commissioner Trade & Taxes**
57 DSTC 107 (Raj.);

(vi) **Commissioner of Sales Tax v. Hari Ram Oil Co.** 87
STR 493 &

(vii) **State of Madras v. Radio and Electricals** 18 STC of
the Paper Book submitted today by the Ld. Counsel
for the applicant, and that circumstances there cannot
be a retrospective cancellation of C-Forms. *29/11*

8. As noticed above, a person aggrieved by an order of the Tribunal, may seek review of the said order on account of some mistake or error apparent on the face of the record or for any other sufficient reasons.

9. It is true that on behalf of the Revenue, it was argued before the Tribunal for the first time that firstly, the applicant was to prove movement of goods, from one State to another and further that only on such proof it was entitled to benefit on concessional rate of tax. In this regard, Tribunal placed reliance on decision in **Renuka Agencies v. Intelligence Officer (IB)**, Calicut 2008 VST 433.

While dealing with the said argument, the Tribunal observed that to prove movement of goods from one State to another is a sine-qua, in order to get benefit of concessional rate of tax.

It is significant to note that even at the time of final arguments on the appeal, Ld. Counsel for the applicant- appellant had contended before the Tribunal that an appeal cannot be dismissed on fresh ground or reasoning, and the Tribunal dealt with this contention also and rejected it, while observing that dealer – applicant has firstly to prove movement of goods, but in this matter the appellant had utterly failed to do so.

Once this very contention now being raised has already been rejected by the Tribunal, the appropriate remedy available to the appellant was by way of appeal, and not by way of review.

10. We have specifically put query to Ld. Counsel for the applicant, if a review petition is maintainable in case findings of the Tribunal are challenged on the ground that same are wrong findings.

In response, Ld. Counsel for the applicant has submitted that review is maintainable even in case of a wrong findings recorded by the Tribunal.

Ld. Counsel has referred to decision in Dr. S.D. Debnath's case (supra) that to point out that hearing of review proceedings cannot be equated with the original hearing of the case and further that a mistake, which can be rectified by way of review, must be apparent from the record.

In the said decision, Hon'ble Tribunal specifically observed that if two reasonable views are possible on a point there should generally be no review, although the view expressed in the judgment may appear to the petitioner to be erroneous.

But, in the course of arguments, Ld. Counsel for the appellant - applicant has not been able to cite any decision on the point that review application is maintainable where the order is stated to be based on wrong findings by the Tribunal.

In view of the ground available under Regulation 24 of Regulation, 2005, review cannot be said to be maintainable in case the order passed by the Tribunal is challenged on the ground that it is based on wrong findings on a particular aspect.

11. In Mohinder Singh Gill's case (supra), Hon'ble Apex Court observed that when statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned.

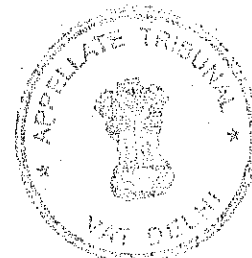
Here, as noticed above, while dealing with the contentions raised by Ld. Counsel for the Revenue, even though advanced for the first time, the Tribunal dealt with the same after having provided opportunity to counsel for the appellant - applicant

as well and ultimately rejected the contentions raised by the Ld. Counsel for the applicant that an appeal cannot be dismissed on fresh reasoning or ground.

Nowhere in the judgment passed by the Tribunal, it stands recorded that any request was made on behalf of the dealer – applicant for adjournment to provide opportunity to the dealer to bring on record documents on the point of movement of goods.

Therefore, we do not find any merit in the contention raised by the Ld. Counsel for the applicant that the Tribunal ^{erred in not} ~~should~~ ^{have} giving opportunity to the dealer to bring on record documents to prove movement of goods.

It may be mentioned here that in the Paper Book – I submitted by the counsel for the applicant – appellant to the registry yesterday, we find that at Sl. No. 5 there is mention of copies of invoices of sale to M/s. Sunil Kumar & Son with GRs in proof of despatch of goods. However, no permission has been sought by the applicant to bring on record such document. Therefore, the set of documents i.e copies of retail invoices and GRs cannot be taken into consideration for the purpose of disposal of this Review Petition.



Dr
29/11

29/11

12. Ld. Counsel for the applicant has submitted that at the time of final arguments on appeal, on behalf of the dealer, reference was made to decision in Commissioner of Sales Tax v. Hari Ram Oil Co's case (supra) but the Tribunal did not discuss the said decision while disposing of the appeal.

On going through the judgment passed by Tribunal, we find that there is no mention that any reference was made on behalf of the dealer to the said decision.

The other decisions cited on behalf of the dealer before the Tribunal at the time of final hearing on appeal were discussed and referred to.

13. As regards decisions in Jain Manufacturing (India) Pvt. Ltd.'s case (supra) and Commissioner of Sales Tax, New Delhi v. Hari Ram Oil. Co's case (Supra) cited by the Ld. Counsel for the applicant in the paper book, it may be mentioned that same pertain to the impact of retrospective cancellation of C-Form.

But, none of these decisions was cited before Hon'ble Members at the time of arguments on the appeal.

14. While dealing with the contentions raised by the Ld. Counsel for the applicant, on the basis of decision in Radio &

Electrical Ltd.'s case (Supra), Hon'ble Members of the Tribunal observed in the manner as :

"We are in agreement with appellant's Ld. Counsel that any judgment or order passed by Hon'ble Supreme Court is binding on this tribunal but the question arisen whether this judgment is applicable in the facts and circumstances of the present appeal? The issue in this judgment was different from the lis in the present appeal. It would be apt to reproduce the issue in the above case before the Hon'ble Supreme Court, which is as follows:-

"When a purchasing dealer in one State furnishes in Form 'C' prescribed under the Central Sales Tax (Registration and Turnover) Rules, 1957, to the selling dealer in another State a declaration, certifying that the goods ordered, purchased or supplied are covered by the certificate of registration obtained by the purchasing dealer in Form 'B' prescribed under rule 5(1) of the Central Sales Tax (Registration and Turnover) Rules, 1957, and that the goods are intended for resale, or for use in manufacture of goods for sale, or for use in the execution of contracts, or for packing of goods for resale, and that declaration is produced

by the selling dealer, is it open to the Sales Tax Authority under the Central Sales Tax Act to deny to the selling dealer the benefit of concessional rates under section 8(1) of the Central Sales Tax Act, 1956, on the view that the certificate in Form 'C' mentions more purposes than one for which the goods are intended to be used, or that the goods are incapable of being used for the purpose for which they are declared to be purchased, or that the goods are applied for some other purpose not mentioned in the certificate in Form 'C'."

It is crystal clear from the bare perusal of above issue that in present appeal the ratio of above judgment is not applicable as issue in the present appeal is different. To get benefit of concessional rate of tax, appellant first has to prove movement of goods from one State to another, which is a sine qua non for these type of transactions as given is section 3 of the CST Act, 1956, which is being reproduced for ready reference:-

"A sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase-

(a) *Occasions the movement of goods from one State to another".*



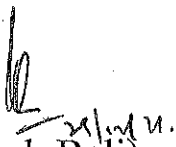
29/11

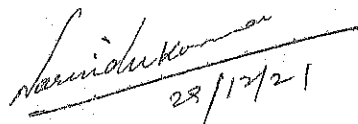
29/11

15. None of the other decisions mentioned in the index of the paper book-II has been referred to by the Ld. Counsel for the applicant at the time of arguments on this review application.
16. In view of the above discussions, we do not find any ground for review of the order dated 25/06/18 passed by Hon'ble Members of the Tribunal while disposing of appeal No. 237/17.
17. Accordingly, this application is here-by dismissed.
18. 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 : 29/12/2021


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



Review App- 13/ATVAT/18/1752-59
In Appeal No. 237/ATVAT/1712

Dated: 31/12/22

Copy to:-

- | | |
|--|----------------|
| (1) VATO (Ward-65) | (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