

S/ No. 147

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

Rev. Application No. : 265/21
In Appeal No. : 213/ATVAT/2017
Date of decision: 03/01/2022

M/s. Vidyut Metallics Ltd.,
Malhotra House, 4th Floor,
Opp. G.P.O. Fort, Mumbai-400001

Also At: WZ/12,
4 Sona Bazaar,
Delhi-110015.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Sh. Shukpreet Maan
Counsel representing the Revenue : Sh. P. Tara

ORDER

1. This review application has been filed u/s 76(13) of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) read with Order XLVII CPC, with prayer for review of judgment dated 21/09/2021 passed by this Tribunal in Appeal No. 213/ATVAT/2017.
2. The ground on which this petition has been filed is that the dealer-applicant is now in possession of original, 'F' Forms, and as such produces the same. Dealer-applicant has annexed to the

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review application copies of all the said Original Duplicate 'F' Forms.

Petitioner-applicant has further alleged that presently it is competent to fulfil the mandatory requirements of the relevant Circular dated 05/11/2009 issued by Joint Commissioner, (Law and Justice) and as such petitioner-applicant be allowed to fulfil the said requirements.

3. Arguments heard. File perused.
4. Appeal No. 213/ATVAT/2017 came to be dismissed by this Tribunal while observing that the dealer-appellant-applicant failed to furnish Original Duplicate parts of 'F' Forms and that the same were even not available with the dealer, as per admitted case of the appellant-applicant.
5. The appeal was filed challenging order dated 25/07/2017 passed by Ld. OHA whereby objections filed by the dealer-appellant were disposed of. Those objections were filed by the dealer against notices of default assessment of tax and interest issued by VATO (Ward-43) — Assessing Authority, on 10/12/2014. The default assessment pertained to the year 2008-2009 whereby the dealer was directed to deposit Rs. 13,02,01,643/- towards tax and interest under Central Sales Tax Act. The objections were dismissed by Ld. OHA on the ground that

furnishing of Original Statutory Forms was mandatory but the dealer failed to furnish the Original Statutory 'F' Forms.

Dismissal of the objections led to filing of the aforesaid appeal before this Tribunal.

6. Undisputedly, the dealer-appellant was entitled to claim credit in respect of Statutory Forms which were stated to have been deposited by the dealer with DVAT-51 form and when the said Statutory Forms got lost or were not traceable. In this regard, reference has already made in the judgment dated 21/9/2021 to circular dated 5/11/2009 issued by Jt. Commissioner (Law & Justice). As per the said circular, following conditions were to be fulfilled by the dealer to avail of concession, in case of loss or non tractability of the statutory forms, stated to have already been deposited by the dealer with DVAT 51 Form.

- i) Furnishing of the receipt in respect of submission of DVAT-51 form alongwith statutory forms for a particular quarter;
- ii) Duplicate parts of the statutory forms; and
- iii) Furnishing of indemnity bond by the dealer affirming therein that if any loss is caused to the government revenue, he shall indemnify the same to the government of the said loss.

7. As noticed above, one of the requirement to claim such credit in respect of such Statutory Forms, which got lost or were not traceable, was that the dealer was to submit duplicate parts of

the Statutory Forms. The dealer – appellant had filed only photocopies of duplicate parts of the said forms. Therefore, the contention raised on behalf of the revenue in the appeal was that for non fulfilment of the said condition, the dealer was not entitled to any credit in respect thereof.

It may be specifically mentioned here that at the time of arguments on merits, learned counsel for the appellant – dealer clearly admitted that original duplicate parts of F-forms were not available with the dealer.

Since the dealer failed to comply with this mandatory requirement of Circular dated 05/11/2019 issued by the Joint Commissioner (Law and Justice), the appeal filed by the dealer was dismissed.

Learned counsel for the applicant – dealer submits that this application has been filed after the original duplicate F-forms have come in possession of the dealer – applicant, on 13/11/2021 as a result of efforts made by the dealer applicant with the erstwhile management of the dealer. Learned counsel has referred to Regulation 24 of Delhi VAT (Appellate Tribunal) Regulations, 2005 and submitted that the judgment passed in appeal be reviewed on the basis of discovery of new matter / evidence, which has now come in possession of the dealer – applicant.



8. 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 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
- (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.”

9. Learned counsel for the Revenue has contended that this review application is not maintainable, and deserves to be dismissed as it is not a case of discovery of any new matter or evidence, and rather, this is a case where the dealer- applicant knew as to where the original duplicate forms were lying but the same were not produced either before the OHA or before the Tribunal.
10. It may be mentioned here that this is not a case where the applicant alleges any mistake or error apparent on the face of record, for the purpose of review of the judgment passed by the Appellant Tribunal.
11. As per case of the applicant, the duplicate F-forms have been collected by the applicant on 13/11/2021 from the erstwhile management. In the course of arguments, we have enquired from learned counsel for the applicant if there is any proof that duplicate F-forms have been collected by the applicant on the said date and that too from the erstwhile management. Thereupon, learned counsel for the applicant has clearly submitted at the bar that the applicant has no proof and it cannot prove the date regarding receipt of duplicate F-forms, copies whereof have been filed with this review application. In view of this submission, the assertion regarding receipt of these

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duplicate forms on 13/11/2021 i.e. after the disposal of the appeal by this Tribunal, thus does not stand established.

12. Even otherwise, an order passed by the Appellate Tribunal can be reviewed in case of discovery of new and important matter or evidence, which after the exercise of due diligence, was not within the knowledge of the applicant or could not be produced by him at the time the order was passed.

Here, production of duplicate statutory forms cannot be ^{said} set to be discovery of new matter or evidence, the reason being [✓] that the dealer – applicant was already having photocopies of the said duplicate statutory forms, and it was within its knowledge that the original duplicate statutory forms were in existence with the previous management.

For review of an order, the applicant was to show that it had exercised due diligence and despite that the original duplicate statutory forms could not be produced.


Here, no application was admitted ^{by} filed by the dealer – applicant before the OHA, in objections, or before this Tribunal, in appeal, to issue process to the persons of the previous management with whom the said original duplicate statutory forms were stated to be available. Before the learned OHA, the dealer-applicant filed only an application for impleadment of the persons [✓] from the previous management. Since no step was

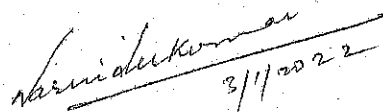
taken by the dealer – applicant for summoning of the said persons of the previous management, for production of original duplicate statutory forms, it cannot be said that the dealer applicant exercised due diligence in this regard.

13. No other argument has been advanced by dealer- applicant.
14. In view of the above discussion, we find that dealer – applicant, has failed to prove that this is a case of discovery of new matter or evidence, which it could not produce earlier when the order was passed by this Appellate Tribunal. Consequently, this review application 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 : 03/01/2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



Rev. App No. 265/ATVAT/21
Appeal No. 213/ATVAT/2017 / 1760-67

Dated: 5/1/22

Copy to:-

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|--|----------------|
| (1) VATO (Ward-43) | (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