

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

Appeal No : 335/ATVAT/2021  
Date of Decision : 25/01/2022

M/s Roxy Bearings,  
627 B, Dev Motor Market,  
Hamilton Road,  
Kashmere Gate,  
Delhi-110 006.

.....Appellant

V

Commissioner of Trade & Taxes, Delhi ..... Respondent

Counsel representing the Appellant : Sh. Wahaj Ahmed Khan.  
Counsel representing the Revenue : Sh. C.M. Sharma.

**JUDGMENT**

1. Present appeal has been filed against order dated 26/10/2021 passed by learned Special Commissioner - Objection Hearing Authority (OHA), whereby objections dated 12/9/2020 filed by the dealer – appellant – assessee have been disposed of.
2. Objections pertained to the notice of default assessment of tax and interest issued u/s 32 of Delhi Value Added Tax Act-2004 (here-in-after referred to as the DVAT Act), by the Assessing Authority – VATO (Ward-18) on 22/3/2018, in respect of 3<sup>rd</sup> quarter of 2013. Vide said notice of default assessment, the

*Narinder Kumar*  
25/1/22

*Rakesh Bali*

Assessing Authority disallowed ITC claimed by the dealer, while observing that the said claim was not verified upto extended dealer.

3. While disposing of the objections filed against the said notice of default assessment of tax and interest, learned OHA remanded the matter to the Assessing Authority with direction to frame assessment afresh within 60 days after taking into account relevant facts and documents/records.
4. Even though the matter has been remanded by learned OHA, Assessing Authority with the above direction, the dealer has come up in appeal.
5. Learned counsel for the dealer – appellant has contended that the impugned order deserves to be set-aside as the claim of refund pertained to the second half yearly of 2010 and the Assessing Authority disallowed the claim in 2018. In support of his submission, learned counsel for the dealer has referred to decision in **M/s. Malkiat Singh & Sons v. Commissioner Trade & Taxes & Anr.**, W.P.(C) 9204/2018, decided by our own Hon'ble High Court on 21/5/2019.
6. On the other hand, learned counsel of the Revenue has submitted that no such point was raised by the dealer before the Assessing Authority or before the learned OHA and that the

learned OHA while appreciating the submission on behalf of the dealer that the matter required thorough examination and verification by the Assessing Authority, remanded the matter to the Assessing Authority.

7. A perusal of written submissions put forth by the dealer before learned OHA at the time of hearing of objections would reveal that one of the objections was that the Assessing Authority had disallowed refund without providing any opportunity to the dealer. In this regard, learned OHA was in agreement with counsel for the dealer and accordingly remanded the matter to the Assessing Authority, the reason being that the claim of the dealer could be verified from the requisite records which required thorough examination and verification. No objection was raised before learned OHA that the rejection of the ITC claim was beyond the prescribed period of limitation.
8. In **M/s. Malkiat Singh & Sons's** case (supra), the dealer was aggrieved by the denial of refund to it pursuant to assessment already finalized and refund was sought to be denied by creating fresh demands which for some periods was nil. In the said decision, reliance was placed on decision in **Shaila Enterprises v. Commissioner of Value Added Tax**, WP(C) 5478 of 2016, wherein it was held by the Hon'ble High Court that once there was a remand order, the VATO was required to

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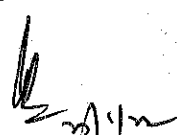
pass fresh order irrespective of whether the dealer appeared or not at the time fixed.


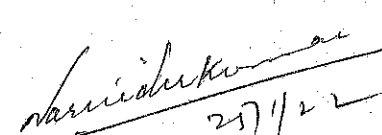
Here the impugned order came to be passed on 26/10/2021 remanding the matter to the Assessing Authority with a direction for fresh assessment and that too appreciating the submission on behalf of the dealer that the assessment was made by the Assessing Authority without providing any opportunity. In the given facts and circumstances decision in **M/s. Malkiat Singh & Sons's case** (Supra) does not come to the aid of the dealer.

9. In view of the above discussion, there being no merit in this appeal, same is hereby dismissed.
10. Parties to appear before learned Assessing Authority on 02/02/2022.
11. 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 : 25/1/2022

  
(Rakesh Bali)  
Member (A)

  
  
(Narinder Kumar)  
Member (J)

Appeal No. 335 / AT VAT / 21 / 1896-03

Dated: 22/1/22

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|--|----------------|
| (1) VATO (Ward-18)   | (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**