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BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial) & Sh. Rakesh Bali, Member (Administrative)

Review Application: ^{No.} 330/Misc./22

ⁱⁿ Appeal No : 335/ATVAT/2021

Date of Order : 15/03/2022

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

.....Applicant

V

Commissioner of Trade & Taxes, Delhi Respondent

Counsel representing the Applicant : ^{Md.} ~~Sh.~~ Wahaj Ahmed Khan.
Counsel representing the Revenue : Sh. C.M. Sharma.

ORDER

1. Appellant had filed appeal No. 335/ATVAT/21 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 were 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

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Assessing Authority - VATO (Ward-18) on 22/3/2018, in respect of 3rd quarter of 2013. Vide said notice of default assessment, the 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 was remanded by learned OHA, ^{to} Assessing Authority with the above direction, the dealer ^{had} ~~came~~ up in appeal.

5. Vide judgment dated 25/01/22, this Appellate Tribunal ^{finding} dismissed the appeal, ^{finding} ~~found~~ that there was no merit in it. Appellant was directed to appear before Ld. Assessing Authority on 02/02/22.

6. Applicant - appellant has filed present Review Petition on the averments that one of the prayers of the dealer-appellant was for refund of the amount claimed by the said dealer, with interest, as the same was disallowed by the Assessing Authority and by the Ld. OHA. Ld. Counsel for the

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applicant has accordingly prayed for review of the judgment passed by this Appellate Tribunal.

7. In the course of arguments Ld. Counsel for the appellant has referred to the averments in the application, wherein he has referred to decisions in **Prime Papers and Packers Vs. Commissioner of VAT (2016) 54 DSTC-1, Shaila Enterprises Vs. Commissioner of VAT (2016) 54 DSTC-15 and Nucleus Marketing and Communication Vs. Commissioner VAT (2016) 54 D SCT - 60.**

8. It may be mentioned here that in the course of arguments on appeal, Ld. Counsel for the dealer-appellant had contended that the impugned order passed by the Ld. OHA deserved to be set-aside as the claim of refund pertain^{ed} to second half yearly of 2010 and the Assessing Authority disallowed the claim in 2018, At the time, reliance was placed on 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.

9. The contention raised by the Ld. Counsel for the applicant, *in appeal,* was opposed by the Ld. Counsel for the Revenue.

10. The appeal was disposed of by this Tribunal by observing in the manner as :

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"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.

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 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.

In view of the above discussion, there being no merit in this appeal, same is hereby dismissed.

Parties to appear before learned Assessing Authority on 02/02/2022."

11. As noticed above, in the course of arguments on appeal, reliance was placed by the Ld. Counsel for the applicant on the above referred ^{to} two decisions M/s. Malkiat Singh & Sons's case (Supra) & Shaila Enterprises's case (supra), (which was referred to in M/s. Malkiat Singh & Sons's case- (Supra), ~~no~~ other decision was cited by Ld. Counsel for the appellant, ~~Also~~, no other point was argued by Ld. Counsel for the appellant.
- Regulation 24 of*

12. Delhi Value Added Tax (Appellate Tribunal) Regulations,

2005 provides as to in which circumstances Appellate

Tribunal can review its own order.

Regulation 24 pertaining to

Section 24 Review of order reads as under:

"

(1) Subject to the provisions contained in sub-section (2) of section 76 of the Act and the rules made thereunder, 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.

(2) Where it appears to the Tribunal that there is no sufficient ground for review, it shall reject the application.

(3) Where the Tribunal is of opinion that the application for review should be granted, it shall grant the same:

PROVIDED that-

(a) 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

(b) 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. "

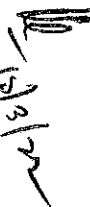
13. Here, as discussed above, Ld. Counsel for the applicant has not been able to point out as to which error apparent on face of order passed by this Appellate Tribunal suffers from. This is not a case where appellant has come up with the averment of discovery of new matter or evidence. Applicant has also not alleged ^{as such} in there/sufficient reason for review of the order.


14. In view of the above discussion, ^{do find} we ~~did not find~~ any merit in this review application, and ^{as such} 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 : 15/03/2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)

Review App. No :- 330/MSI/22 | 2032-39
in Appeal No. 335/ATVAT/21

Dated: 14/3/22

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| (1) | VATO (Ward-) | (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. | | |

REGISTRAR

