219

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

Rev Application No.: 19/ATVAT/16-17
In Appeal No.: 1802/ATVAT/11-12
Date of Order: 25/03/2022

M/s Aggarwal Agencies Pvt. Ltd.
D-16/2-3, D-Block
Okhla Industrial Institutional Area
Phase-I, New Delhi – 110 020 .....Applicant

V

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

Counsel representing the Appellant : Sh. Rajesh Jain.
Counsel representing the Revenue : Sh. M.L. Garg.

ORDER

1. Present review application has been filed u/s 76(13) of Delhi Value Added Tax Act-2004 (here-in-after referred to as DVAT Act), read with Regulation 24 of DVAT (Appellate Tribunal) Regulations 2005. The applicant seeks review of judgment dated 3/11/2016 passed by this Appellate Tribunal, in appeals No. 1802-1806/ATVAT/11.

APPELLATE TRIBUNAL VAT DELHI

25/3/22 29/3/22

2. At the outset, it may be mentioned that review of judgment is being sought on a ground which was admittedly neither taken in the memorandum of appeal nor put forth during arguments in the appeal.

The ground is that the VATO, who exercised powers, had no jurisdiction, and some other VATO had the jurisdiction to act.

3. Vide judgment dated 27/10/2016, the Appellate Tribunal partly allowed the appeals No.1802-1806/ATVAT/11 filed by the dealer – appellant – assessee while setting-aside order dated 17/1/2012 passed by learned Objection Hearing Authority (OHA) in the manner indicated therein.

The appeals were filed as Learned OHA had disposed of objections filed by the dealer – assessee against notice of default assessment of tax, interest and penalty, pertaining to the tax period March – April, 2008-09.

The notices of assessment were framed by the Assessing Authority on 2/8/2011, and thereby demands were raised by the Revenue towards tax, interest and penalty as regards following tax periods:

APPELLATE TRIBUNAL VAT DELHI

	Ref. No.	Period	Tax	Interest	Penalty	Total
A.	040503911112	April 08-09	82814	39308	-	122122
	040503971112	April 08-09	-	-	82814	82814
B.	040503931112	March 08-09	43137	14537	-	57674
	040504021112	March 08-09	-	-	43137	43137
C.	040514631112	March 08-09	-	-	50000	50000
	Grand Total		**125951**	**53845**	**175951**	**355747**

4. Brief facts as available in para -2 of the judgment passed by the Appellate Tribunal are

> "It was noticed by learned VATO that dealer had claimed ITC for Rs. 82,814/- on purchase of Honda Civic Car (AT) and Honda Civic 1.8s MT in the month of June 2007 and July 2006 respectively which according to learned VATO is not allowed being not crediditable goods under VII schedule of DVAT Act so he disallowed this ITC of Rs. 82,814/- and imposed tax to the tune of Rs. 82,814/- interest of Rs. 39,308/- and also imposed penalty of Rs. 82,814/-. Secondly, during the tax period of 2008-09 on scrutiny the learned VATO found that appellant has received credit notes on local purchases of Rs. 10,78,425/- from M/s. ITC Ltd., and appellant has not reduced ITC @ 4% u/s 10(1) of DVAT Act so learned VATO imposed tax to the tune of Rs. 43,127/- on the amount of ITC which was not reversed by the appellant and he also imposed interest of Rs. 14,537/- on this amount and penalty of Rs. 43,137/-. Learned VATO also imposed penalty of Rs. 50,000/- u/s 33 read with section 86(13) for not maintaining stock register."

5. As observed by the Appellate Tribunal, there were three issues

involved in the appeals i.e. firstly, regarding rejection of ITC on Car; secondly, regarding imposition of penalty for non maintenance of stock register; and thirdly, rejection of credit notes issued by selling dealers.

6. While dealing with the contentions raised by the learned counsel for the appellant, as regards rejection of ITC, Appellate Tribunal was of the view that in view of specific provision denying the ITC on purchase of automobiles, there was no ground to interfere with the orders passed by the learned OHA, and accordingly upheld the same.

At the same time, Appellate Tribunal observed that Department would be at liberty to take appropriate action in accordance with law in respect of 1/3rd input tax credit allowed to the appellant as regards the tax period July, 2006 and April 2007, as the same was allowed contrary to the statutory provisions.

As regards imposition of penalty, while dealing with the contentions raised on behalf of the dealer – appellant, Appellate Tribunal was of the view that same was not sustainable and accordingly set-aside the levy of penalty.

As regards, rejection of ITC on the value of credit notes, after considering the contentions raised by learned counsel for the dealer – appellant, Appellate Tribunal observed that said claim

of the dealer was wrongly denied.

That is how, the appeals were partly allowed.

7. As already mentioned, review application has been filed by the dealer-objector only on the point of jurisdiction of Sh. Babu Lal, VATO (Audit), to frame assessment. As averred in the application, VATO (Audit) had not been conferred jurisdiction by the Commissioner.

Revenue has opposed the prayer for review of the judgment. The contest is on the ground that admittedly, this point was never raised by way of objection in the objections filed before Learned OHA challenging the assessments; that this point was also not taken in the memorandum of appeal; that undisputedly, this point was also not raised before learned Appellate Tribunal during arguments.

At the cost of repetition, it is significant to note that this point was neither raised by way of objection in the objections filed before Learned OHA challenging the assessments nor it was taken in the memorandum of appeal and even not raised before learned Appellate Tribunal during arguments on merits in the appeals.

8. It has been argued on behalf of the applicant that the judgment passed by this Appellate Tribunal, while disposing of the appeal, cannot be said to have attained finality, and that review application is maintainable. In this regard, reference has been made to provisions of section 76(11) of DVAT Act.

Learned counsel for Revenue has opposed this argument by submitting that the judgment passed by the Appellate Authority attained finality, when the same has not been challenged by way of appeal.

Section 76(11) of DVAT Act provides that an order passed by the Appellate Tribunal on an appeal shall be final, save as provided in section 81 and sub-section (12) of section 76 of DVAT Act.

9. As regards section 81, same pertains to appeal to the Hon'ble High Court from every order passed by the Appellate Tribunal.

Admittedly, no appeal has been filed against the judgment passed by the Appellate Tribunal. It remains unexplained as to how provisions of S.81 come to the aid of the applicant to say that this review application is maintainable because it only provides for filing of appeal.

10. Now, as regards sub-section (12) of section 76, same provides

that the Appellate Tribunal may rectify any mistake or error apparent from the record or its proceedings.

11. Undisputedly, it is not case of the applicant that any mistake has been made by the Appellate Tribunal while disposing of the appeal. Rather, it has been admitted that the ground now sought to be put forth was never raised earlier.

As regards the other expression "error apparent from the record or its proceedings", we have to refer to the provisions of Regulation 24 of Delhi VAT Appellate Tribunal Regulation 2005.

Regulation 24 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.
>
> (1) Where it appears to the Tribunal that there is no sufficient ground for review, it shall reject the application.
>
> (2) 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."

12. In view of the above provision pertaining to review of order, any person feeling aggrieved by the order of the Appellate Tribunal is to satisfy that the review is being sought because of discovery of new and important matter or evidence and that the said matter or evidence was not within his knowledge or could not be produced at the time the order was passed by the Appellate Tribunal.

On behalf of the applicant, it has been argued that arguments in the appeal were concluded before the Appellate Tribunal in May, 2016, and the orders were reserved, but in the meanwhile issue relating to jurisdiction VATO (Audit) came up for consideration before Hon'ble High Court of Delhi in **M/s. Capri Bathaid (P) Ltd. & Ors. V. Commissioner of VAT** reported as (2016) 90 VST 143 (Del.), and following the same, Hon'ble Court quashed the default notices of tax, interest and penalty in the case of **M/s. JMD Digital Art Xchange (P) Ltd.** decided on 10/8/2016 and thereafter in **M/s. ITD-ITD CEM JV**

v. Commissioner of Trade & Taxes decided on 3/10/2016.

So, it has been urged on behalf of the applicant that in view of the decision in the above cited three cases, the judgment dated 3/11/2016 passed by the Appellate Tribunal, to the extent the same confirmed the orders dated 2/8/2011, be reviewed and the default notices issued by VATO (Audit) be quashed.

On the other hand, learned counsel for the Revenue has contended that the issue regarding jurisdiction of the VATO was earlier not raised before the learned OHA or before this Appellate Tribunal, and as such there is no merit in the contention raised on behalf of the applicant.

The fact that the said issue regarding jurisdiction of the VATO was earlier not raised before the learned OHA or before this Appellate Tribunal, is candidly admitted by the applicant and its learned counsel.

As is available from the records of appeals No. 1802-1806/11, arguments were advanced on merits on 10/5/2016 and the judgment was pronounced on 27/10/2016. Decision in Capri's Case (supra), was delivered by our own Hon'ble High Court on **2/3/2016,** interpreting the provisions already part of the enactment i.e. DVAT Act. Simply because the said decision came to be published in some Law Book, subsequently, i.e. in

May, 2016, same does not come to the aid of the applicant. The reason is that no one stopped the applicant from raising this point or objection before the department or the Learned OHA. Furthermore, no one stopped the applicant from raising this point or ground in the memorandum of appeal. The dealer – appellant was having proper legal assistance of an able counsel Sh. Ramesh Johri, Advocate. But, this point was never raised.

Similarly, because the other two decisions, cited by learned counsel for the applicant above, were delivered subsequently, does not help the applicant on this point. Therefore, we do not find any merit in the said ground put forth by counsel for the applicant, for review of the order.

13. We have repeatedly enquired from learned counsel for the applicant if there is any error apparent on the face of record, but he has not been able to point any error apparent on the face of record, in the judgment passed by this Appellate Tribunal.

14. The only other ground for review of the order as per Regulation 24 is "for any other sufficient reason".

Counsel for the applicant has not been able to point out any other sufficient reason, which calls for review of the judgment. We also do not find any sufficient reason for review of the judgment.

15. Applicant cannot be allowed to seek review of earlier judgment by agitating before us for the first time, an issue hotly contested by the Revenue, which the dealer never raised earlier.

16. In view of the above discussion, we are of the considered view that this is not a case calling for review of the judgment passed by the Appellate Tribunal. As a result, the application is hereby dismissed with imposition of costs of Rs.10,000/- under the appropriate Head.

17. 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 : 25/03/2022.

25/3/22

(Rakesh Bali)
Member (A)

25/3/2022

(Narinder Kumar)
Member (J)

Rev. App No:- 19/ATVAT/16-17
In Appeal No. 1802/ATVAT/11-12 /3136-43

Dated: 28/3/22

Copy to:-

(1) VATO (Ward-93)
(2) Second case file
(3) Govt. Counsel
(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.
(6) Dealer
(7) Guard File
(8) AC(L&J)

APPELLATE TRIBUNAL VAT DELHI

REGISTRAR