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

Appeal No.228-233/ATVAT/2018

Date of Decision: 28/03/2022

M/s. Evogreen Trading (P) Ltd.,  
1/5, W.H.S. Kirti Nagar,  
New Delhi – 110015.

.....Appellant.

V.

Commissioner of Trade & Taxes, Delhi.

..... Respondent

Counsel representing the Appellant : Sh. V. Lalwani.  
Counsel representing the Revenue : Sh. C. M. Sharma.

### **JUDGMENT**

1. These appeals have been filed by the appellant against orders dated 29/10/2018, passed by Learned. Joint Commissioner, (here-in-after referred to as the Objection Hearing Authority - OHA).
2. Vide impugned orders, Learned OHA has rejected the objections filed by the dealer-assessee-objector-appellant on the ground that objections were filed beyond the prescribed period.

*Narinder Kumar*  
28/3/22

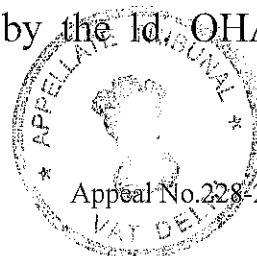
*Rakesh Bali*  
28/3/22

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3. Since common issue is involved, these appeals have been taken up together and are being disposed of by a common judgment.
4. As per case of the dealer-appellant, default assessments of the appellant company under the CST Act, pertaining to all the four quarters of the tax period 2011-12, were framed by the Assessing Authority, vide orders dated 26/3/2016, whereas assessments relating to all the four quarters for the tax period 2012-13, under the CST Act, were framed vide orders dated 24/3/2017.
5. Feeling dissatisfied with the assessments framed, dealer-assessee filed, in all, eight objections i.e. four objections in respect of assessment year 2011-12 and four objections in respect of assessment year 2012-13.
6. Learned SOHA disposed of objections pertaining to assessment relating to the 4<sup>th</sup> quarter of 2011-12 and 4<sup>th</sup> quarter of 2012-13 vide order dated 22/6/2018.
7. When remaining six objections were taken up for hearing, a preliminary objection was raised by the Id. OHA, regarding



maintainability of the above objections, same having been filed on 13/5/2018.

8. On behalf of the dealer, it was averred that the impugned notices of default assessment were never served on the assessee-objector company; and that the assessee company came to know of the assessments only on 7/5/2018; that the dealer-objector company obtained the certified copies of the above notices of default assessment and then filed the objections on 13/5/2018.
9. As per record, Learned OHA adjourned the objectors to 10/10/2018 and called for report, regarding service of notices, from the system branch.
10. Objector company is stated to have filed an affidavit of one of its directors.
11. Since the objections were not being disposed of, on 15/10/2018, the Objector company is also stated to have served a notice u/s 74(8) of the DVAT Act, in form DVAT-41, requesting Learned OHA to decide the above objections within 15 days from the date of notice.

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12. Case of the dealer-appellant is that during hearing on objections, Learned OHA wanted the dealer to appear to verify service of notices, but representative of the dealer could not be called by the counsel.
13. As noticed above, case of dealer-appellant is that the assessments were framed beyond the stipulated period, and as such, same are barred by time. On the other hand, Ld. OHA rejected the objections on the ground that same were time-barred.
14. Learned counsel for the dealer-appellant submitted that it was for the department to prove service of notice of default assessment on the dealer. In this regard, learned counsel placed reliance on decision dated 14.7.2021 by this Appellate Tribunal in Appeal No.90/2019 - **M/s Mahendra Industrial Corp. v. Commissioner of Trade & Taxes, Delhi.**
15. Another contention raised by learned counsel for the appellant is that the impugned assessments do not bear signatures of the Assessing Authority, and as such no reliance could be placed on such assessments. In this regard, learned counsel has placed reliance on following decisions:



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- i. Swastic Polymers vs. Commissioner of Trade & Taxes & Anr., WP(C) 4385/2017, decided on 19/5/2017 by our own Hon'ble High Court;
- ii. Bhumika Enterprises vs. Commissioner, Value Added Tax and Ors., (2015) 85VST 367 (Delhi);
- iii. Kilasho Devi Burman and Ors. vs. Commissioner of Income Tax, West Bengal, Calcutta, 1996IIAD(SC) 337.

16. Learned counsel for the appellant has submitted that when affidavit was filed on behalf of the dealer to explain delay in filing of the objections, Learned OHA was required to take into consideration the unchallenged affidavit and proceed to dispose of the objections on merits, instead of rejecting the same on the ground that same were barred by limitation. In this regard, learned counsel for the appellant has rightly placed reliance on decision in **Mehta Parikh and Co. v. Commissioner of Income Tax, Bombay**, AIR 1956 SC 554.

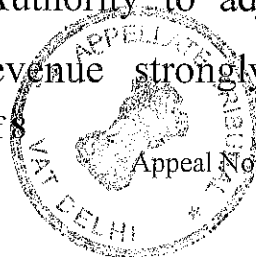
17. When it is case of the dealer-appellant that assessments framed by the Assessing Authority were never served upon him, it was for the learned OHA to take into consideration all the averments/grounds raised in this regard in the objections and also the affidavit of the director of the dealer-objector.



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18. As rightly pointed out by learned counsel for the appellant, Learned OHA has not given any reason which led him to the conclusion that the objections were filed beyond the prescribed period of limitation.
19. Learned counsel for the Revenue has candidly admitted that while rejecting the objections on the ground that same were time-barred, Learned OHA has not given reasons.
20. We find that in the impugned order, Learned OHA neither discussed the affidavit of the deponent nor gave any reason for discarding the same.
21. For want of reasons, the orders passed by Learned OHA cannot be allowed to stand. In other words, the impugned orders deserve to be set aside for want of reasons.
22. When we expressed that the case needs to be remanded to Learned OHA for decision afresh, as the impugned order is without any reasons, learned counsel for the appellant submitted that the Appellate Tribunal should itself dispose of, without remanding the matter to Learned OHA, as the Appellate Tribunal is final Authority to adjudicate a fact. Learned counsel for the Revenue strongly opposed this



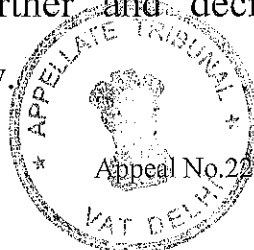
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submission on the ground that when no reasons were given by Learned OHA for rejecting the objections on the ground that same were time barred.

23. We find merit in the contention raised by learned counsel for the Revenue. When the order passed by Learned OHA is without any reason, the matter is required to be remanded to the same, so that the point of limitation is decided by the said Authority giving reasons, after providing reasonable opportunity to the dealer-Objector of being heard. In case, Learned OHA arrives at the conclusion that the objections were filed within the prescribed period of limitation, then he would be required to proceed further and decide the other objections.

24. Consequently, these appeals are disposed of and while setting aside the impugned orders, the matters are remanded to Learned OHA to decide afresh the issue as to whether the objections filed by the dealer-objector were or were not barred by limitation, after providing to the dealer-objector reasonable opportunity of being heard, and in case the conclusion is that the objections were filed within the prescribed period of limitation, then to proceed further and decide the other objections in accordance with law.



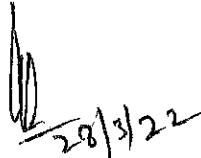
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25. Dealer-appellant to appear before Learned OHA on 19/4/2022
26. File be consigned to the record room. Copy of the order be supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 28/03/2022.

  
(Rakesh Bali)  
Member (A)



  
(Narinder Kumar)  
Member (J)



Appeal No. 228-233/Arvat/18/3152-59

Dated: 30/3/22

Copy to:-

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|--|----------------|
| (1) VATO (Ward-53)   | (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**