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

Misc. Application No. 249/ATVAT/21

Appeal No. 293-308/ATVAT/14

Date of Order : 27/04/2022

M/s. Indian Oil Corporation Limited  
World Trade Centre,  
Babar Road,  
New Delhi – 110 001.

..... Appellant

v.

Commissioner of Trade & Taxes, Delhi.

..... Respondent

Counsel representing the Appellant : Sh. A.K.Bhardwaj

Counsel representing the Respondent : Sh. P.Tara

**ORDER**

1. This order is to dispose of Application No. 249/21 filed on behalf of the dealer-appellant with prayer that additional ground mentioned in the annexure to this application be allowed to be taken.

The prayer reads as under:-

“That the correct turnover liable to be taxed on the interpretation of Section 2(1)(zd) proviso as held by the

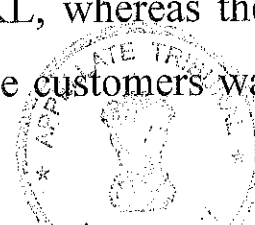
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VAT Tribunal in its order dated 01/12/2011 and also found to be correct by the Apex Court, be computed on the basis of the evidence produced by the applicant/appellant and on examination of the same the correction in the taxable turnover computed in the impugned order dated 14/03/2014 be allowed.”

2. The case of the dealer-appellant is that by way of 12 appeals it has challenged order dated 19/09/2014 passed by Learned OHA in respect of six notices of default assessment of tax and interest and six notices of assessment of penalty, relating to the tax periods November 2006 to June 2007.
3. The dealer-applicant is seeking to amend the Memo of Appeal to raise additional ground only relating to tax period April'07, so as to challenge the assessment of tax which has been incorrectly levied and consequential imposition of interest and penalty. The amendment is sought to be made alleging that while making assessment of tax, error crept in while calculating the taxable turnover for the said tax period i.e. April 2007.

The case of the dealer is that vide order of assessment dated 14/03/14, relating to tax period April 07; quantity of Petrol and Diesel was taken at 73661 & 92514 KL, whereas the correct quantity of Petrol and Diesel sold to the customers was 30176



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& 40890 KL respectively, and this has led to error in calculation of the turnover thereby enhancing the turnover.

4. Present application, as noticed above, came to be filed<sup>only</sup> in November 2021. In the application, dealer has alleged that the error in the assessment order came to the notice of the dealer only in the year 2016 but by then the Learned OHA had disposed of the objections vide order dated 19/09/14.
5. Dealer - applicant has alleged that after the disposal of the objection in September 2014 it filed an application u/s. 74(B) of DVAT Act before the concerned VATO on 16/1/2016 but the same has not so far been disposed of despite repeated requests and reminders. A Writ Petition is also stated to have been filed by the dealer before the Hon'ble High Court seeking directions to the department for disposal of the rectification application.

Hon'ble High Court, while taking into consideration fact of pendency of these appeals, did not issue any directions to the learned VATO for disposal of the rectification application. Hence this application before this Appellate Tribunal.

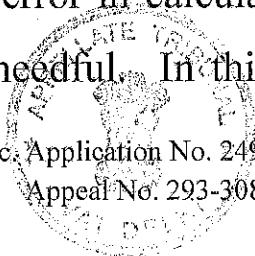
6. Arguments heard. File perused.

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7. In the course of arguments, learned counsel for the applicant has candidly admitted that no such ground was raised by the dealer – objector before learned OHA.
8. Vide order dated 30/9/2021 passed by our own Hon'ble High Court in W.P.(C) 11141/21, by the appellant – petitioner, the petition was disposed of as not pressed while observing that as and when any application is preferred by the petitioner before this Appellate Tribunal, same shall be decided in accordance with law.
9. The point regarding error in calculation of the turnover relating to tax period April, 2007 is a question of fact. This very point was not raised by the dealer before learned OHA, despite opportunity. Undisputedly, application filed by the dealer before learned VATO for rectification of the said error *calculation of* regarding/turnover is already pending.
10. In the given facts and circumstances, we deem it a fit case where the department – concerned VATO shall take into consideration the prayer of the dealer – appellant and find out if there is any error in the calculation of turnover relating to tax period April, 2007, as alleged in para 9 of present application, and in case it is found to be a case of error in calculation, the department shall take steps to do the needful. In this regard,



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learned VATO to allow the dealer – applicant to render assistance by production of relevant documents / account books, as desired by learned VATO.

- with abovesaid observations,*
11. *✓ ✓* This application for raising of additional ground of appeal before this Appellate Tribunal is accordingly dismissed.
12. 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 : 27/4/2022.

*27/4/2022*  
(Rakesh Bali)  
Member (A)

*Narinder Kumar*  
*27/4/2022*  
(Narinder Kumar)  
Member (J)



MA. NO. 249/ATVAT/21  
Appeal No. 293-308/ATVAT/14 | 4212-19

Dated: 28/4/22

Copy to:-

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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<br>DVAT/GST, Delhi - through EDP branch. |                |

  
**REGISTRAR**