

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

Review Application No.407- 412/ATVAT/22

In Appeal no. 228-233/ATVAT/2018

Date of Order: 29/4/2022

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

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

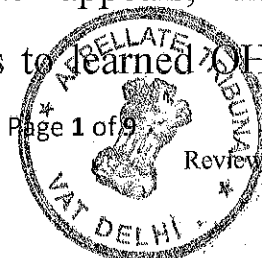
.....Respondent

Counsel representing the Applicant : Sh. V. Lalwani

Counsel representing the Revenue : Sh. C. M. Sharma

**ORDER**

1. Present six review applications came to be filed on 08-04-2022 u/s 76(13) of DVAT Act read with regulation 24 of DVAT (Appellate Tribunal) Regulations, 2005, with prayer for review of order dated 28-03-2022 passed by this Appellate Tribunal.
2. Vide common judgment dated 28-03-2022, this Appellate Tribunal disposed of six appeals no. 228-233 of 2018, filed by the applicant-dealer.
3. While disposing of the appeals, this Appellate Tribunal remanded all the matters to learned OHA to decide all the six



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*Narinder Kumar*  
29/4/22

*Rakesh Bali*  
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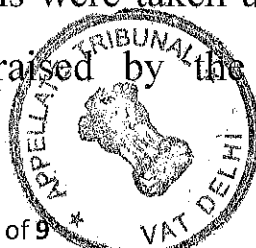
objections filed u/s 74 of DVAT, afresh. The operative part of the judgment reads as under:

“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.”

4. The objections were presented by the dealer before learned OHA challenging default assessments framed under CST Act. Four assessments for the tax period 2011-2012 were framed vide order dated 26-03-2016, and the assessments relating to tax period 2012-13 were framed vide order dated 24-03-2017. Feeling aggrieved by the said assessments, the dealer challenged the same by way of objections.

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 22-06-2018.

When remaining six objections were taken up for hearing, a preliminary objection was raised by the learned OHA,



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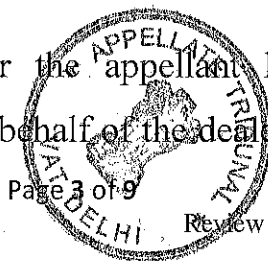
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regarding maintainability of the above objections, same having been filed on 13/5/2018.

5. Learned SOHA rejected all the objections on the ground that the same were time barred. That is how, the dealer filed appeals No. 228-233 before this Appellate Tribunal. As noticed above, the appeals were disposed of vide common judgment dated 28/3/2022.
6. On 11/4/2022 present six applications for review came to be filed by the dealer.
7. Arguments heard on the review applications. File perused.
8. Learned counsel for the dealer – applicant has referred to para 20 of the judgment passed by this Appellate Tribunal and submitted that he never submitted before this Appellate Tribunal that learned OHA did not discuss the affidavit of the deponent, but this Appellate Tribunal has so observed in para 20 of the judgment, and as such there is error apparent on record.

In this regard, for ready reference para 16 of our judgment in the appeals is reproduced hereunder:

“Learned counsel for the appellant has submitted that when affidavit was filed on behalf of the dealer to explain delay in filing



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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.”

9. As noticed above, at the time of final argument Learned counsel for the appellant had 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.

10. We disposed of the appeals by observing in the manner as :-

“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.

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.



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.

We find that in the impugned order, Learned OHA neither discussed the affidavit of the deponent nor gave any reason for discarding the same.

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.

When we expressed that the case was the one which required to be remanded to Learned OHA for decision afresh, as the impugned order was 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 submission on the ground that when no reasons were given by Learned OHA for rejecting the objections on the ground that same was time barred."

In view of the above submission made before this Tribunal at the time of final arguments in the appeals, we do not find that <sup>such</sup> any error has crept in our judgment passed in the appeals.

11. In these applications, learned counsel for the applicant has submitted that learned OHA had given reasons in coming to the conclusion that the objections were barred by limitation, and as such error has crept in the impugned judgment passed by this



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Appellate Tribunal wherein it has been observed that learned OHA had not given any reason to arrive at this conclusion.

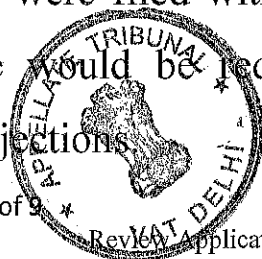
In this regard, reference to para 18 of our judgment passed in the appeals would reveal that learned counsel for the appellant himself pointed out that learned OHA had not given any reason in arriving at the conclusion that the objections were barred by limitation. Even learned counsel for the Revenue admitted that learned OHA had not given reasons.

Therefore, we do not find that any error has crept in our judgment passed in the appeals.

12. Learned counsel for the applicant has submitted that this Appellate Tribunal erred in remanding the matter to learned OHA instead of disposing of the matter finally.

In this regard, it may be mentioned here that while disposing of the appeals, when we observed that the order passed by Learned OHA <sup>was</sup> being without ~~any~~ reason, the matter had to be remanded, so that the <sup>✓</sup> point of limitation <sup>✓</sup> was decided by the said Authority giving reasons, after providing reasonable opportunity to the dealer-Objector of being heard.

We further directed that in case, Learned OHA arrived at the conclusion that the objections were filed within the prescribed period of limitation, than he ~~would be~~ required to proceed further and decide the other objections.



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It may be mentioned here that Review application is not maintainable on the ground that a decision by the Appellate Tribunal is a wrong decision.

At the stage reference may be made to the provisions of Regulation 24 of Delhi VAT Appellate Tribunal Regulation 2005, same reads as under :

**“Regulation 24**

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



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(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."

13. 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 or ~~for~~ any other sufficient ground.

Here, when the last contention raised by learned counsel for the applicant is that the decision rendered by this Tribunal to remand the matter to learned OHA is wrong, review application is not maintainable on this ground.

14. No other argument has been advanced by learned counsel for



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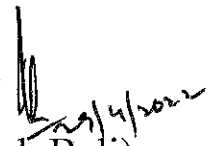


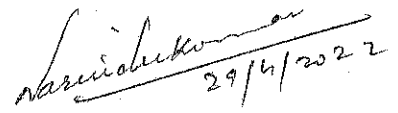
the applicant in any of the Review Applications.

15. 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, each application is hereby dismissed with costs of Rs. 2,500/-. The dealer to deposit totals <sup>sum</sup> ~~some~~ of Rs, 15,000/- under the appropriate Head of the Respondent.
16. 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 : 29/4/2022.

  
(Rakesh Bali)  
Member (A)

  
(Narinder Kumar)  
Member (J)



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Appeal No. 228-233/ATVAT/18 | 4260-67

Dated: 9/5/22

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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**

