

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

Appeal Nos. : 394/ATVAT/22

Date of Judgment: 10/5/2022

M/s. Bearing Syndicate,
640, Hamilton Road,
Delhi – 110 006.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Appellant : Mohd. Wahaj Ahmed Khan

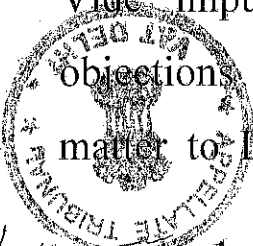
Counsel representing the Revenue : Sh. S.B. Jain

JUDGMENT

1. Appellant – proprietor of proprietorship concern- assessee registered with Department of Trade and Taxes, Delhi vide TIN No. 07580036043 is feeling aggrieved by order dated 14/03/22 passed by Learned Special Commissioner –II / Objection Hearing Authority (hereinafter referred to as OHA).

Impugned order pertains to tax period 4th Quarter 2013-14.

2. Vide impugned order, Learned OHA has partly allowed objections filed by the dealer on 22/09/21 and remanded the matter to Learned Assessing Authority with the directions to



frame assessment afresh within 60 days while taking into consideration all relevant facts and documents.

3. Objections were filed u/s 74 of Delhi Value Added Tax Act, 2004 (herein after referred to as DVAT Act) against notice of default assessment of tax and interest, issued u/s 32 of DVAT Act. It was issued on 22/03/18. Learned Assessing Authority disallowed the claim of the dealer regarding refund of Rs. 241283/- on the ground that ITC was not verified up to extended dealer and the dealer had not migrated to GST. Learned Assessing Authority has specified that the claim has been disallowed in view of provision of Section 40A read with Section (9)(g) of DVAT Act.
4. As noticed above, Learned OHA remanded the matter to Learned Assessing Authority for fresh assessment observing that there were several important factual aspects which required to be examined and the claim of the dealer can be verified from the requisite records after examination and verification in the light of legal principles laid down in the matter of **On Quest Merchandising India Pvt. Ltd. v. GNCTD**, WP(C) No. 6093/2017 decided on 26/10/2017 by our own Hon'ble High Court.
5. Arguments heard. File perused.



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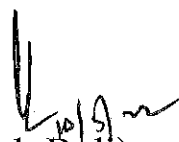
6. Learned counsel for the dealer-objector-appellant has pointed out that the impugned assessment by Assessing Authority is barred by limitation in view of provisions of Section 34 and 38 of DVAT Act. Further, learned counsel has submitted that in the written submissions presented before learned OHA, he has taken this very objection in view of provisions of Section 34 and 38 of DVAT Act, but learned OHA has not decided the said objection.
7. Assessment pertains to tax period 4th Quarter of 2013. The claim of refund pertained to tax period 4th Quarter, 2009-2010.
8. Undisputedly, the said objection that the assessment framed by the Assessing Authority on 22/03/2018 was barred by limitation, was not one of the grounds of objection, but the fact remains that in the written submissions, the said objection was specifically taken. In this situation, learned OHA could refuse to hear the objector on this ground not specified in the objection or allow the objector to raise the said objection specifying that omission of the said ground from the objections was not wilful or unreasonable. There is nothing in the impugned order that learned OHA did not allow the objector to argue the said ground. Therefore, learned OHA was required to decide the said objection as well. However, learned OHA has not decided the said objection while disposing of the objections and remanding the matter to learned Assessing Authority.


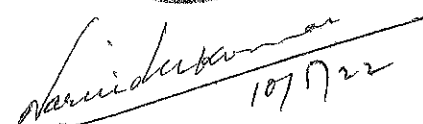


9. In the given situation, learned counsel for the Revenue is in agreement that the matter needs to be remanded to learned OHA for decision afresh after providing reasonable opportunity of being heard to the dealer.
10. Consequently, this appeal is disposed of, the impugned order dated 14/03/2022 passed by learned OHA is set aside and matter is remanded to learned OHA for decision of the objections, including the aforesaid ground pertaining to applicability of Section 34 and 38 of DVAT Act, after providing opportunity to the dealer-objector of being heard.
11. Dealer-appellant to appear before learned OHA on 23/05/2022.
12. Copy of the judgment be placed in the appeal file. Copy of Judgment be also 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 : 10/5/2022


(Rakesh Bali)
Member (A)



(Narinder Kumar)
Member (J)

Appeal No. 394/ATVAT/22/4348-4355

Dated: 11/05/2022

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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