

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

Rev. Application No. 44/2006
In Appeal No. 225/STT/04-05
Date of Order: May 10th, 2022

M/s H. B. Sons,
6693, Khari Baoli,
Delhi.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Sh. R. Mahana
Counsel representing the Revenue : Sh. P. Tara

ORDER

1. This order is only on the point of maintainability of Review Application No.44/276 filed on behalf of the Dealer-Appellant in Appeal No.225/STT/04. The application has been filed u/s 48 of Delhi Sales Tax Act. The prayer in the application is for review only of the dissenting judgment passed by Sh. Bharat Bhushan, learned Member (Judicial) of DVAT Appellate Tribunal delivered on 20.01.2006.
2. Arguments heard on the point of maintainability of the review application. File perused.



Narinder Kumar
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3. On 28th March 2022, question as regards the maintainability of the review application arose, in view of the fact that the dissenting views were given by the Learned Members of this Appellate Tribunal. Thereupon, Learned Counsel for the Appellant sought adjournment to press on the point of maintainability of Review Application.
4. That in how, arguments advanced by Learned Counsel for the parties on the only point of maintainability of the Review Application. Written submissions have already been submitted on behalf of the applicant on this point.
5. Learned Counsel for the applicant has submitted that in view of provision of section 43(6) of Delhi sales Tax Act, the Appellate Tribunal is empowered to confirm, reduce, enhance or annul the assessment or set aside the assessment and to direct the assessing authority to make fresh assessment or pass such order, as it may think fit, but herein order passed by the Appellate Tribunal is inconsequential, and as such the application for review is maintainable.

Learned Counsel for the applicant also submitted that subsequently Appeal No. 96/ STT/ 04-05 filed by M/s. Durga Trading Company and another appeal filed by M/s. Boleynath & Sons were also disposed of and in view of the said decisions, the judgment dated 20/1/2006 is required to be



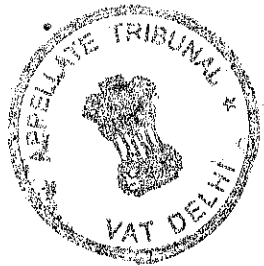
reviewed, as the Appellate Tribunal cannot ignore the decision by the coordinate Bench.

6. On the other hand, Learned Counsel for the Revenue has submitted that this is a case where dissenting view having been given by one of the Hon'ble Members of the Appellate Tribunal, application is not maintainable. Learned counsel has made reference to the provisions of section 48 of CST Act and section 106 (1) & (3) of DVAT Act.

7. Reference has been made to section 106 (1) & (3) only to point out that even though DST Act stands repealed, anything done under the said Act shall be deemed to have been done or action taken shall be deemed to have been taken in exercise of powers conferred by this Act, i. e. DVAT Act, as if this Act were in force on the date on which such thing was done or action was taken.

DVAT Act came into force w. e. f. 01/04/05. The judgment containing the dissenting views was delivered by this Appellate Tribunal on 20/01/2006.

8. Common judgment dated 20.01.2006 pertains to appeal no. 225/STT/04 and other appeals nos. 78,96,98,99,100,101, 168,202,211,231/STT/04. Other learned Member of the Appellate Tribunal was Member (Administrative).



9. Sh. Bharat Bhushan, learned Member (Judicial) gave dissenting view giving finding that the appeals were liable to be dismissed and that same shall be dismissed. Sh. K. Sethuraman, learned Member ^(Adviser.) of the Tribunal recorded finding that the appeals deserved to be allowed and the tax assessed on sales on Katha & Supari deserved to be reduced by amounts assessed in excess of amount assessable @ 4%; that the deduction, if any, claimed in the returns u/s 4(2)(a)(i) of the Local Act where denied, was required to be allowed subject to the satisfaction of the Ld. Assessing Authority with the conditions subject to which the points of sale in question were tax exempt were complied with.

10. Section 73(5) of DVAT Act provides that where the number of members of the Appellate Tribunal is more than one and if the members differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the members are equally divided, the decision of the Chairperson of the Appellate Tribunal thereon shall be final.

11. In view of the above said provision of Section 73(5) of DVAT Act to the present case, when learned Member (Judicial) differed in opinion and delivered a dissenting view, there being no majority and the Members being equally divided, the



decision of the Chairperson of the Appellate Tribunal was to be final.

12. As per provisions of Section 73(2) of DVAT Act, where the number of Members of the Appellate Tribunal is more than one, the Government is required to appoint one of the Members to be the Chairperson of the Appellate Tribunal. Admittedly, during the days judgment was delivered in the appeal filed by the appellant, out of the two Members of the Appellate Tribunal, none of them was appointed by the Government to be with the Chairperson of the Appellate Tribunal.

In absence of any Chairperson of the Appellate Tribunal during the relevant period, there was no question of finality of the said decision in view of dissenting views and the Members being equally divided. In this way, till today the said judgment is unenforceable, the judgment having not attained finality on account of non-appointment of one of the two Members during that period, to be the Chairperson of the Appellate Tribunal and non exercise of such powers.

13. On 07/09/2021, when this review application was taken up, learned counsel representing the applicant and learned counsel for the Revenue submitted that they would take appropriate steps to bring this fact to the notice of Government of NCT of



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Delhi, so that the order dated 20/01/2006 becomes enforceable.

On the next date, Sh. P. Tara, counsel for the Revenue submitted that he had brought to the notice of the Commissioner, Department of Trade and Taxes about the order dated 07/09/2021 passed by this Appellate Tribunal. However counsel for the applicant, having not appeared on 04/10/2021, there was no information from his side about any steps taken by him.

14. The fact remains that the judgement dated 20/01/2006 has not ~~yet~~ attained finality for want of decision by the Chairperson of the Appellate Tribunal or for want of designation of one of the then Hon'ble Members to be the Chairperson of the Appellate Tribunal.

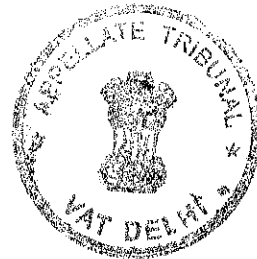


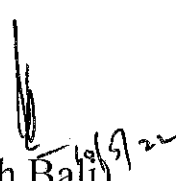
15. The submission put forth by learned counsel for the applicant that in the subsequent decisions by this Appellate Tribunal on the same point in other matters, similar orders passed by learned First Appellate Authority have been set aside, is of no aid to the applicant on the point of maintainability of this review application at this stage, for want of final decision by the Chairperson, due to dissenting views by the then Hon'ble Members, who were equally divided.

16. It may be mentioned here that as per contents of para 4 of the written submissions on behalf of the applicant, appeal has not been disposed of, but in para 8 contrary to this submission, it has been put forth that unless there is an enforceable order passed by the Tribunal, no appeal can be filed before the Hon'ble High Court.
17. Since the judgment dated 20.1.2006 has not ~~yet~~ attained finality, this review application with prayer for review only of the dissenting view given by Hon'ble Member (Judicial) is not maintainable. Same is hereby dismissed.
18. Copy of the order be sent 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. *Rev Application no - 44/2006/*
255/STT/04-05 / *4364-71*

Dated: 11/05/2022

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 DVAT/GST, Delhi - through EDP branch. | |




REGISTRAR