

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

Rev. Application No.: 448/ATVAT/22

Appeal No.: 291/ATVAT/21

Date of Order: 30/5/2022

M/s Kohli Tyre Trading Company,
CW-610 Sanjay Gandhi Transport,
New Delhi -110042.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

CA representing the Appellant : Sh. Sandeep Singh Maan with
Sh. R. K. Chauhan, Adv.

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

ORDER

1. This Review Application has been presented on 17/05/2022. Prayer is for review of judgment dated 07/04/2022 passed by this Appellate Tribunal, whereby appeal No. 291/21 was partly allowed while setting aside the imposition of penalty but upholding the impugned order as regards tax and interest and thereby dismissing the appeal in part.

Narinder Kumar
30/5/2022

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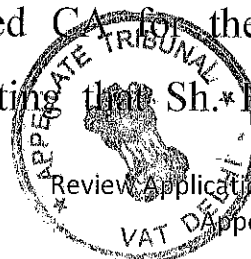
The impugned order was passed by Learned Objection Hearing Authority (hereinafter referred to as OHA) on 14/10/2021 disposing of the objections filed by the dealer – objector.

2. The objections were filed challenging the notice of Default Assessment of Tax and Interest issued on 02/03/2013 framed by Assessing Authority.

Assessment was made by Learned Assessing Authority after a survey was conducted by the business premises of Dealer-Applicant. As per survey report, Enforcement – I Branch had found that there were variation in the stock and cash.

Before framing assessment, Learned Assessing Authority had issued notice u/s. 59(2) of Delhi Value Added Tax Act, 2004 (hereinafter referred to DVAT Act) to the dealer to explain stock variation and cash variation and the dealer submitted its reply there to. Since Learned Assessing Authority was not satisfied with the version put-forth by the dealer, assessment of tax, interest and penalty was framed, which led to filing of objections and ultimately appeal No. 291/21.

3. Arguments heard. File perused.
4. Sh. Sandeep Singh Maan, learned CA for the applicant has opened his submission by submitting that Sh.*R. K. Chauhan,



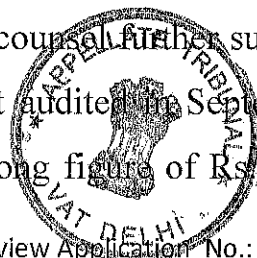
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who represented the appellant in the Appeal No. 291/21 did not rightly put forth the case of the dealer before this Appellate Tribunal and as such, the appellant has filed this review application.

5. In this regard, it may be mentioned that ^{about 20/5} ~~this~~ submission has not been put forth anywhere in the application.
6. However, when we have enquired from learned counsel for the appellant as to on which point Sh. R. K. Chauhan, learned counsel could not rightly put forth his submissions, Sh. Sandeep Singh Maan has submitted that Sh. R. K. Chauhan did not lay thrust on audited balance sheet which was produced before learned OHA.
7. It may be mentioned here that in the course of arguments on appeal, following submission was put-forth on behalf of the dealer :-

“That stock variation occurred because the trading account submitted by the dealer to the Enforcement Team, which conducted survey, was prepared on provisional basis and calculated on the basis of GP ratio. He further submitted that wrong figure appeared as regards stock, in the trading account, because the accountant of the dealer was not present. Learned counsel further submitted that it was only when the books were got audited in September, 2012 that the dealer came to know that wrong figure of Rs. 90,15,831/-



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was submitted in the trading account, given to the Enforcement Team, and that the correct figure of the stock was Rs. 51,76,720/-."

8. In the course of arguments in the appeal on merits, Learned Counsel for the appellant also submitted copy of audited Trading Account as on 31/3/2012. As per this document, closing stock was shown as Rs. 51,76,720.03. Learned counsel also submitted copy of Trading Account of the dealer – appellant as submitted by the dealer to the Enforcement Team, at the time of survey i.e. on 17/8/2012. As per this document the closing stock was shown as of the value of Rs. 73,84,900/-. During arguments on appeal, learned counsel also submitted copy of Trading Account, which according to him depicted the correct figure of the closing stock as on 17/8/2012 i.e. at the time of survey. As per this document, the closing stock as on 17/8/2012 was of the value of Rs. 37,84,932/-.

9. On the aforesaid aspect, this Appellate Tribunal observed in the manner as :

"10. From the submissions put-forth by learned counsel for the dealer – appellant, it can safely be said that the dealer admits that the value of the closing stock as shown in the trading account, as on 17/8/2012, and shown to the Enforcement Branch, was incorrect and that the actual closing stock, to be shown in the Trading Account, as on the said date i.e. 17/8/2012 was actually Rs. 37,84,932/-.



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11. It may be mentioned here that in the notice of default assessment, u/s 32 of DVAT Act, framed by the learned Assessing Authority, it does not find specific mention that learned C.A. representing the dealer submitted to the learned Assessing Authority, copy of the audited Trading Account. What stands recorded in the notice of default assessment is that learned CA had submitted relevant record of the firm.

12. However, in the impugned order passed by learned OHA, there is a specific mention that the dealer – objector produced copy of audited balance sheet.

13. Before learned Assessing Authority or before learned OHA, it was not the case of the dealer that the figure regarding value of the stock as on 17/8/2012 submitted to the Enforcement Team, was provisional and that it so because no accountant of the dealer was available.

Before learned OHA, the objector claimed that the variation of stock was due to wrong valuation method adopted by the survey team. However, this point was never raised before learned Assessing Authority.

In the course of argument, before this Appellate Tribunal, learned counsel for the dealer – appellant has not argued that this is a case where proper valuation method was not adopted by the survey team or that is why there was variation in stock.



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14. This is a case where statement of the Proprietor of the concern was recorded by the Enforcement Team, at the site. Stock variation was reported by the survey team, on physical checking of the stock, and valuation was done in the presence of the said proprietor. The inventory list was admittedly prepared in the presence of the proprietor and he signed the same.

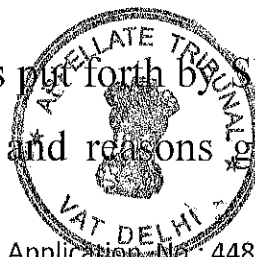
It is not a case of the dealer that at the time of survey he lodged protest with the Enforcement Team regarding physical checking of the stock and its valuation or as regards the inventory list. Soon after the survey, the dealer never lodged any protest with the concerned ward on any of the said point/ objection.

The audit of the account books of the dealer admittedly took place in September, 2012. Even at that time, the dealer did not submit to the concerned ward or the concerned learned VATO that the wrong figure as regards stock as on 17/8/2012 submitted before the Enforcement Team was a provisional one or that its accountant was not available on that date.

All this goes to show that the dealer was not maintaining his accounts in accordance with Law/ Rules.”

10. Ultimately, we found no merit in the above said contention raised by Learned Counsel for the appellant.

11. In view of the above submission which was put forth by Sh. R. K. Chauhan while arguing appeal on merits and reasons given by



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this Appellate Tribunal while dealing with the said submission, we do not find that Sh. R. K. Chauhan did not properly put forth case of the appellant while arguing the appeal.

12. In this review application, the dealer – applicant has alleged that this Appellate Tribunal has erred in recording the following:-

“Before learned OHA, the objector claimed that the variation of stock was due to wrong valuation method adopted by the survey team. However, this point was never raised before learned Assessing Authority.

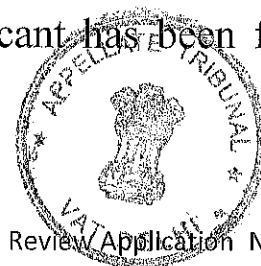
In the course of argument, before this Appellate Tribunal, learned counsel for the dealer – appellant has not argued that this is a case where proper valuation method was not adopted by the survey team or that is why there was variation in stock.”

It is also case of the dealer – applicant that Appellate Tribunal has erred in recording finding that the objector neither raised the point that variation of stock was due to wrong valuation method adopted by the survey team.

Applicant has also alleged that observations made by this Appellate Tribunal in Para 15 of the judgment is not correct, as according to the applicant, the applicant has been filing returns

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under Sales Tax Act, DVAT Act, DST Act and there is no adverse report against the dealer.

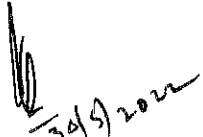
However, in the course of arguments, learned CA for the applicant has not pressed any of the above grounds or advanced any such argument.

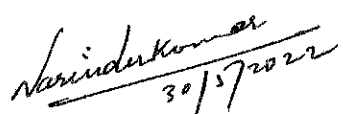
13. As a result, we do not find that the judgment dated 07/04/2022 passed by this Appellate Tribunal calls for review. The review application is, therefore, dismissed with cost of Rs. 8,000/-.

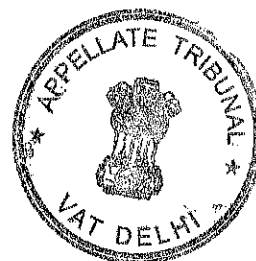
14. Copy of the order be placed in the appeal file. Copy of order be also supplied to both the parties as per rules. One copy be sent to the concerned authority. Another copy be displayed on the concerned website.

Announced in open Court.

Date : 30/5/2022


(Rakesh Bali)
Member (A)


(Narinder Kumar)
Member (J)



Review App: 448/ATVAT/22/4540-49
in Appeal No. 291/ATVAT/21

Dated: 31/5/22

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

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REGISTRAR

