

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

Rev. Application No.: 441/ATVAT/22
Relating to Appeal No.:161/ATVAT/19
Date of Judgment : 31/05/2022

M/s. Hathway Cable & Datacom Ltd.,
KH-241, Ground Floor,
Saidulazab,
West End Marg,
New Delhi-110030.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Applicant : Sh. Aseem
Mahrotra, Sh. M.
K. Gandhi.
Counsel representing the Revenue : Sh. S. B. Jain.

JUDGMENT

1. Present review application came to be presented on 25/04/2022. The applicant-company has sought review of judgment dated 11/02/2022 passed by this Appellate Tribunal in Appeal No. 161/19.

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Appeal No. 161/19 was filed by the dealer, feeling aggrieved by order dated 17/12/2020 passed by learned OHA. Vide judgment dated 11/02/2022; this Appellate Tribunal dismissed the above said appeal.

The matter pertained to 1st quarter of the year 2013-14

Assessing Authority had directed the dealer to pay a sum of Rs. 5,29,08,977/- by way of tax and interest. Assessment of tax and interest was framed u/s 9(2) of Central Sales Tax Act (CST), on 6/3/2018.

During hearing on objections before Learned OHA, dealer - appellant submitted 8 F forms of the value of Rs. 24,35,48,799/- and the learned OHA allowed exemption regarding the said value. However, as regards F-forms which were still missing, learned OHA directed the dealer - appellant to pay tax @ 12.5% on the value of the said forms, i.e. Rs. 44,35,491/-. That is how, objections were filed by the dealer-assessee.

Feeling aggrieved by the disposal of the objections by Learned OHA in the aforesaid manner, the dealer-objector filed above said appeal before this Appellate Tribunal.



2. Present review application has been filed on the ground that the judgment passed by this Court suffers from error apparent on the face of record.

Learned counsel for the applicant has submitted that Section 76(5)(c) of DVAT Act empowers the Appellate Tribunal to permit the person aggrieved to adduce evidence not presented to the Commissioner for goods and sufficient reasons, and as such the Appellate Tribunal should have allowed the prayer of the appellant to raise additional ground of appeal; but with the dismissal of the application the judgment passed by the Appellate Tribunal suffers from error and as such the review application deserves to be allowed.

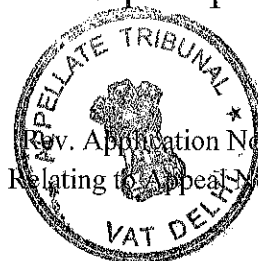
In the application itself, reference has been made to the extracts of following decisions:

- I. M.S. Ahlawat vs. State of Haryana (2000) 1 SCC 278
- II. BCCI vs. Netaji Cricket Club (2005) 4 SCC 741
- III. Moran Mar Basselios Catholicos and Another vs. The most Rev. Mar Poulse Athanasius and Others [(1955) 1 SCR 520]
- IV. Rajesh D. Darbar and Others vs. Narasingrao Krishnaji Kulkarni & Ors. [(2003) 7 SCC 219]



3. To appreciate the only contention raised before us, we have gone through the record and the extracts of the above-referred to decisions on the point of review where an order suffers from error on the face of record.
4. It may be mentioned here that during pendency of the appeal, appellant had filed application -MA No. 282/21, dated 21/10/2021 to take additional ground of appeal. It came to be filed after disposal of application u/s 76(4) of DVAT Act.

As per averments in the above said application No.282/21, the dealer sought to introduce that it was a case of transfer of stock from Delhi to Jaipur branch by the dealer itself; that the difference in the value of 'F' forms and that of the consignor - Delhi branch was due to the fact that the recipient of the goods had marked the value based upon the "average cost" of goods auto-accounted for branch transfer by ERP accounting system in the state of Rajasthan, as against the "actual cost" of goods given in Material Release Order (MRO); that the average cost auto accounted by the ERP accounting software was lower as compared to import cost of the transferred goods; and further that the prices stated in MROs, were inadvertently stated higher by the godown keeper based on their import price including duties, freight, etc.



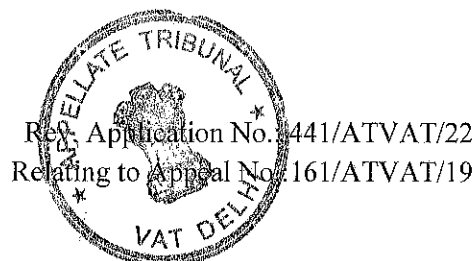
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That application was opposed by the Revenue while submitting that the additional ground sought to be raised pertained to undetermined facts/disputed facts. It was also opposed while submitting that said ground was not raised by the dealer before the Assessing Authority or before learned OHA, and as such the same could not be allowed to be raised before this Appellate Tribunal for the first time.

In the course of arguments in the appeal, learned counsel for the dealer-appellant admitted that the said additional ground, sought to be raised in appeal was never taken before the Assessing Authority or in the objections filed before learned OHA. However, learned counsel for the dealer-appellant submitted that the additional ground, sought to be raised was a legal ground, which the dealer could raise even before this Appellate Tribunal.

5. The applicant has alleged in Para No. 13 of this review application that this review application has been filed after withdrawal of VAT Appeal No. 2/2022 presented before our own, Hon'ble High Court. As ^{per} order dated 13/4/2022 [✓] passed by the Hon'ble High Court, the said appeal was not pressed [^] after some arguments were advanced by learned counsel for the appellant. [✓]



So, the VAT Appeal challenging the judgment passed by this Appellate Tribunal stands dismissed as having been withdrawn and review application has been presented after withdrawal of the appeal.

6. As regards provision of section 76(5)(c) of DVAT Act, the aggrieved person may be permitted to adduce evidence. In other words, this provision does not pertain to raising of additional ground or granting of permission for raising of additional ground.

Rather, Rule 57(C)(3) of DVAT Rules, 2005 is the relevant provision as regards raising of new ground in the memorandum of appeal. It provides that the Appellate Tribunal shall not, at the hearing of appeal allow the appellant to go into any ground of appeal not specified in memorandum of appeal unless the Appellate Tribunal is satisfied that omission of that ground there from was not wilful or unreasonable.

This is a case where in the application seeking permission to raise additional ground it was alleged that the additional ground was sought to be raised as the appellant had pointed out the same to the counsel only at that time, i.e. during the days of filing of the application. Undisputedly, no specific or satisfactory ground was put forth in the said application



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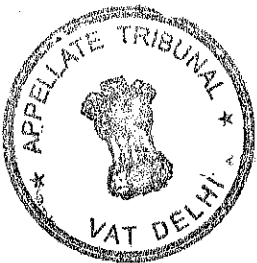
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alleging that omission of the said ground in the memorandum of appeal was not wilful or unreasonable.

7. As regards the expression “error apparent from the record or its proceedings”, it is appropriate to refer to the provisions of Regulation 24 of Delhi VAT Appellate Tribunal Regulation 2005.

Regulation 24 reads as under :

“(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.

(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.”

8. 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.



While referring to the provisions of sub-section (5) of Section 76 of DVAT Act, the Appellate Tribunal did not find any merit in the contention raised by counsel for the

dealer that the said additional ground was only a legal ground or that same could be raised in appeal for the first time. In this regard, following observations were made by this Appellate Tribunal:

“5. Sub-section (5) of Section 76 of DVAT Act provides that in proceedings before the Appellate Tribunal, the person aggrieved shall be limited to disputing only those matters stated in the objections. It is also significant to note that at no point of time, the dealer filed any application before the revenue for rectification in the return alleging that the prices stated in the MROs were inadvertently shown on the higher side, by the godown keeper, on the basis of imposed price including duties, freight, etc. Even otherwise, as per case of the appellant-applicant, this ground is based on facts, which were never put forth before the revenue.

Learned counsel for the revenue has rightly submitted that the ground now sought to be raised is not a legal ground and rather pertains to facts, and that since this fact was never agitated before the revenue, there is no merit in the contention raised by learned counsel for the dealer that this additional ground can be raised, being a legal ground.”

Undisputedly, the facts, on the basis of which new ground was sought to be raised in the appeal, were undetermined facts. Had the same been put forth by the dealer before the department in the very beginning, the same would have got



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determined. But the fact remains that the said ground based on facts was never put forth before the department and was rather sought to be raised in appeal for the first time, on undetermined/ disputed facts.

When the new ground sought to be raised pertained to undetermined facts, for the reasons recorded in the judgment dated 11/02/2022, the application deserved to be dismissed. Accordingly, the same was dismissed.

In the given facts and circumstances, this Appellate Tribunal went on to observe that order dated 22/3/2019 passed by Jt. Commissioner of State Tax, GST, Appeal-II, Mazgaon, Mumbai, in some other matter of the dealer, and relied on by learned counsel for the dealer – appellant did not come to the aid of the dealer – appellant.

Accordingly, for the reasons recorded in the judgment, Appeal No. 161/19 was also dismissed on merits.

Result

10. In view of the above discussion, we do not find that the judgment delivered by this Appellate Tribunal suffers from any error on the face of record. There is no merit in the application seeking review of the judgment dated 11/02/2022. Consequently, the application is hereby

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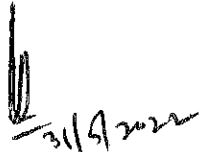
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dismissed with cost of Rs. 20,000/- to be deposited under the appropriate head "others".

11. 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: May 31, 2022.



(Rakesh Bali)

Member (Administrative)



(Narinder Kumar)

Member (Judicial)



Review No. 441/ATVAT/22/4604-4611
in Appeal No. 161/ATVAT/19

Dated: 03/06/22

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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