

BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI

Sh. Narinder Kumar, Member (Judicial)

Misc. Applications No.455-466/ATVAT/22

In Appeal Nos. 380-391/ATVAT/2009

Date of Order: 06/06/2022.

M/s. Central Tyres,
CW-533, Sanjay Gandhi Transport Nagar,
Delhi – 110 042.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Applicant : Sh. A.K.Babbar
Counsel representing the Revenue : Sh. S.B. Jain

ORDER

1. This common order is to dispose of above captioned twelve review applications i.e MA No. 455-466/22.
2. Present applications came to be presented by the dealer on 31/05/2022. Each application is for exercise of powers of “suo-motu review” of judgment dated 28/07/2014 passed by this Appellate Tribunal in appeal numbers 3380-391/09 (actually 380-391/09).

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Appeal Nos. 380-391/ATVAT/2009

Vide common judgment dated 28/07/2014, this Appellate Tribunal disposed of all 12 appeal Nos. 0380-0391/09 and other appeals filed by other dealers as well. As a result of the findings all the appeals were dismissed, so far as levy of tax and interest is concerned, but as regards imposition of penalty u/s. 86(10) and 86(12) of DVAT Act same were partly allowed remitting 50% of the amount of penalty.

3. Arguments heard. File perused.
4. Learned counsel for the applicant has submitted that the dealer-applicant herein did not challenge the judgment passed by this Appellate Tribunal, even though many other dealers, who were appellants before this Appellate Tribunal, filed appeals before the Hon'ble High Court.

The only ground put-forth by the dealer-appellant for not challenging the judgment passed by this Appellate Tribunal is that it would have led to multiplicity of appeals. Learned counsel has referred to decision in **Union On India vs. Ashish Agarwl**, (2022) 138 taxmann.com 64(SC), wherein in the given situation, Hon'ble Apex Court proposed to pass the order with a view to avoid filing of further appeals before the Hon'ble Apex Court, which would have burdened with

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approximately 9000 appeals against the similar judgments and orders passed by various High Courts.

In view of the above submissions, learned counsel for the appellant has urged that this Appellate Tribunal should suo-motu review the judgment dated 28/7/2014.

✓ On the other hand, learned counsel for Revenue has opposed this application on the grounds of its maintainability, when the prayer is for exercise of powers by this Appellate Tribunal to suo-motu to review the judgment. Learned counsel for the Revenue has also submitted the dealer – appellant accepted the judgment passed by this Appellate Tribunal and did not file any appeal, he cannot re-agitate the matter by way of this application. Further according to learned counsel, Hon'ble High Court delivered judgment in the year 2015 but the applicant has knocked at the door of this Appellate Tribunal about seven years thereafter, for which there is no explanation from the side of the applicant. Accordingly, learned counsel has urged that all these applications deserves to be dismissed.

5. In ^{the} ~~those~~ appeals, Hon'ble High Court framed common following question of law:-



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"(i) Whether the Appellate Tribunal-VAT was right in holding that the appellants were required to reverse input tax credits claimed on purchases made by them, in the course of their activities as dealers, on account of credit notes issued by selling dealers, despite the selling dealers having confirmed that they have not reduced their output tax liability.

(ii) Whether in the facts and circumstances of the case, it can be said that the returns filed by the appellants were false, misleading or deceptive, attracting penalty U/S 86(10) of the Act."

As further alleged in the application, the Hon'ble High Court vide judgment dated 21/08/2015 set-aside the judgment delivered by this Appellate Tribunal.

6. As to what has led the applicant –dealer to file these applications, as claimed therein, the department has initiated recovery of the amount of demand. Hence, this prayer to the Appellate Tribunal for Suo-Moto review.

Maintainability of application for review

7. Under Section 76(12) of DVAT Act, the Appellate Tribunal may rectify any mistake or error apparent from the record of its proceedings.

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Section 76(13) provides that any order passed by the Appellate Tribunal may be reviewed suo –motu or upon an application made in that behalf.

Regulation 24 of DVAT (Appellate Tribunal) Regulations, 2005 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.

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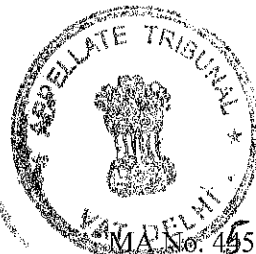
(2) Where the Tribunal is of opinion that the application for review should be granted, it shall grant the same:

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."

There is no doubt that in case of suo motu review, no period of limitation has been prescribed as the Appellate Tribunal is to review the order of its own, and not on any application. However, this is not a case where this Appellate Tribunal has of its own taken up the decided matter. In case of suo-motu review, no application is to be filed by any party. The party can file an application only in the circumstances as find mentioned in Regulation-24, and that too within the prescribed period of limitation. Therefore, this application requesting this Court to exercise powers for suo-motu review is not maintainable.



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✓ Even otherwise, as per regulation 24 where an application is filed by a party aggrieved, it is required to be filed within 60 days from the date of service of the order. Here, the impugned order was passed by this Appellate Tribunal on 28/7/2014. Therefore, the application filed by the dealer for review is barred by limitation and not maintainable.

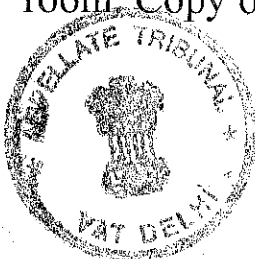
8. Furthermore, the decision by the Hon'ble High Court in the appeals preferred by other dealers is of the year 2015. Present application has been filed about 7 years after the said decision. There is nothing in the application to suggest as to why the applicant did not move any application for review of the judgment soon after decision by the Hon'ble High Court in the year 2015. So, this application is not maintainable even on this ground.
9. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error. Here, application has been filed on the ground that Hon'ble High Court has set aside the judgment passed by this Appellate Tribunal on appeal filed by the other dealers.
10. Admittedly, the dealer did not file any appeal against the judgment passed by this Appellate Tribunal. Here, the dealer accepted the judgment passed by this Appellate Tribunal, by



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not challenging the same. He also did not file any review application within the prescribed period of 60 days. This also goes to show that the dealer accepted the judgment by the Appellate Tribunal and in this way, he did not see even any ground to seek review within the prescribed period. In the given facts and circumstances, observations made by the Hon'ble Supreme Court in Ashish Agarwal's case (supra) do not come to the aid of the applicant.

11. Error apparent on the face of the record is an error which can be seen by a mere perusal of the record without reference to any other matter. The fact that the decision on a question of law on which the judgment of the Tribunal is based has been reversed or modified by the subsequent decision of a superior court in any other case is not a ground for review of judgment by this Appellate Tribunal.
12. In view of the above discussion, all these applications filed by the dealer, seeking suo-motu review of the judgment dated 28/7/2014 are hereby dismissed.
13. Copy of the order be placed in the connected applications No. 456-466/22. File and the record 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 : 6/6/2022

Narinder Kumar
6/6/2022

(Narinder Kumar)
Member (J)



In Appeal No. ^{M.A.No - 455-466/ATVAT/22} 380-391/ATVAT/22 / 4636-43

Dated: 06/06/22

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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