

**BEFORE DELHI VALUE ADDED TAX, APPELLATE TRIBUNAL DELHI**

Sh. Narinder Kumar, Member (Judicial)

Appeal No. 400/ATVAT/22

Date of Judgment: 8/6/2022

M/s Kewal Bearing Store,  
444/2, Zeenat Bari, Kashmiri Gate,  
Delhi-110006.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Shri Wahaj Ahmad Khan

Counsel representing the Revenue : Sh. C.M. Sharma

**JUDGMENT**

1. Present appeal has been filed by the dealer feeling aggrieved by order dated 14-03-2022 passed by Special Commissioner-Learned OHA.
2. Vide impugned order, learned OHA partly allowed the objections filed by the dealer and remanded the matter to Assessing Authority directing him to frame assessment afresh within 60 days, taking into consideration all the relevant facts and documents/records.

*Narinder Kumar*  
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3. The matter pertains to tax period second half yearly of 2010-2011. The dealer filed objections against notice of default assessment of tax and interest framed u/s 32 of DVAT Act.
4. The default assessment was framed on 05-07-2012 by learned VATO-Assessing Authority, after issuance of notice u/s 59(2) of DVAT Act regarding its claim of refund for the tax period 01-10-2010 to 31-03-2011.

It may be mentioned here that the dealer did not provide the requisite documents to the learned Assessing Authority. Accordingly the claim for refund of Rs. 91,836/- was disallowed.

5. Feeling aggrieved by the assessment, the dealer filed objections u/s 74(1) of DVAT Act. The objections were partly allowed by observing in the manner as:-

“In view of the peculiar facts of the present case, I am of the considered opinion that there are several important factual aspects which need to be examined and the claim of the objector-dealer can be verified with the requisite records which require thorough examination & verification by the Assessing Authority in light of legal principles laid down by Hon’ble High Court in the matter of On Quest Merchandising Pvt. Ltd. (supra).



In view of the above, objection filed by the objector-dealer is disposed of in the following terms:-

- i. Objection ref. no. 687434 dated 27.08.2021 for the tax periods Second Half yearly, 2010-11 is hereby partially allowed for the reasons stated herein above and the matter is remanded back; AND
- ii. Assessing Authority is directed to frame assessment afresh within 60 days after taking into account the relevant facts & documents/records and to report the compliance of aforementioned directions to this Court."

6. Arguments heard. File perused.

7. Learned counsel for the appellant has contended that vide impugned order learned OHA has remanded the matter to Assessing Authority even though the claim of refund has been declined much after the period prescribed for the refund. The contention is that learned OHA should have adjudicated the point of limitation raised by the objector in para 3 of the grounds of objections and decided the same in favour of the dealer, instead of remanding the matter. In support of his contention, learned counsel has referred to decision in **Sona Builders v. Union of India & Ors.**, (2001) 170 CTR (SC) 180 and decision in **M/s. Zareen Traders v. Commissioner of Trade & Taxes, Delhi**, Appeal No. 206/ATVAT/17, by this Appellate Tribunal.

8. I have gone through the decisions cited by learned counsel for the appellant.

9. Learned counsel for the Revenue has rightly pointed that in **M/s. Zareen Traders** case (supra), the OHA was convinced that refund had been wrongly rejected, but even then he remanded



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the matter to the concerned VATO, and as such the case is distinguishable as regards facts.

10. As noticed above, here, learned OHA has remanded the matter to learned Assessing Authority for decision afresh as he was of the considered opinion that several important factual aspects which required to be examined, could be verified from the requisite record.

11. Relevant provision of Sub-Section (1) (2) (3) & (4) of section 38 of DVAT Act are extracted below for ready reference:

- i. Commissioner shall refund to a person the amount of tax, penalty and interest, if any, paid by such person in excess of the amount due from him.
- ii. Before making any refund, the Commissioner shall first apply such excess towards the recovery of any other amount due under this Act, or under the CST Act, 1956 (74 of 1956).
- iii. Subject to 1 [sub-section (4) and sub-section (5)] of this section, any amount remaining after the application referred to in sub-section (2) of this section shall be at the election of the dealer, either – 2 [(a) refunded to the person, –
  - (i) within one month after the date on which the return was furnished or claim for the refund was made, if the tax period for the person claiming refund is one month;
  - (ii) within two months after the date on which the return was furnished or claim for the refund was made, if the tax period for



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the person claiming refund is a quarter; or] (b) carried forward to the next tax period as a tax credit in that period.

iv. Where the Commissioner has issued a notice to the person under section 58 of this Act advising him that an audit, investigation or inquiry into his business affairs will be undertaken 1 (or sought additional information under section 59 of this Act,) the amount shall be carried forward to the next tax period as a tax credit in that period."

✓ 13. As noticed above, the amount if any by way of refund is required to be refunded to the dealer within two months after the date of which return is furnished or claim for refund is made, if the tax period for the person claiming refund is a quarter.

✓ 18. Here the concerned tax period is second half yearly 2010. Notice u/s 59(2) of DVAT Act is stated to have been issued by Assessing Authority to the dealer on 07-06-2011 calling upon the said dealer to produce documents/information in support of its claim of refund for the tax period 01-10-2010 to 31-03-2011.

When the dealer raised objection before the learned OHA that no such notice was served by learned VATO upon the dealer and that even no such notice is available on the portal of Department of Trade and Taxes, it was for learned OHA to adjudicate these objections and then proceed further.

In view of the specific objections raised by the dealer that notice u/s 59(2) was required to be issued within two months from the



date of furnishing the return, learned OHA was also required to decide this point/objection.

However, as noticed above, the learned OHA has not adjudicated the above said point/objections.

14. In the given facts and circumstances, the appeal is disposed of and while setting aside the impugned order (except the findings recorded in para 5 and 6 as regards application of provision of section (9)(2)(g) of DVAT Act), matter is remanded to learned OHA for decision afresh on all the objections whatever are pressed by the dealer.

The dealer is directed to appear before learned OHA on 27-06-2022.

15. File be consigned to 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: 08/06/2022



*Narinder Kumar*  
8/6/22  
Narinder Kumar  
Member (J)

Appeal No. 400/ATVAT/22/4768-75

Dated: 04/06/22

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. |                |



  
**REGISTRAR**