

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

M.A. No.: 619/2022.

In Appeal Nos. : 348-352/ATVAT/2014

Date of Order: 26/12/2022

M/s. Eicher Goodearth Pvt. Ltd.,
A-3, 3rd Floor, Select City Walk Mall,
District Centre, Saket, Delhi, 110017.

.....Applicant

v.

Commissioner of Trade & Taxes, Delhi

.....Respondent

Counsel representing the Applicant
Counsel representing the Revenue

: Sh. Atul Gupta
: Sh. P. Tara.

ORDER

1. Present application u/s 76(12) of Delhi Value Added Tax Act, 2004 (hereinafter referred to as DVAT Act) read with Regulation 24 of Delhi Value Added Tax (Appellate Tribunal) Regulations, 2005, came to be presented before the Registry on 23/11/2022.
2. The prayer in the application is for review of judgment dated 26/09/2022 passed by this Appellate Tribunal in Appeals No. 348-352/14.

The prayer clause reads as under:-

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- a) allow the present application filed by the Applicant;
 - b) amend Final Order dated 26/09/2022, to the extent pertaining to the challenge by the Applicant to interest and penalty demand;
 - c) rectify the mistakes as pointed out above;
 - d) grant a personal hearing; and
 - e) pass such other or further orders as may be deemed fit and proper in the facts and circumstances of the case.
3. It may be mentioned here that vide common judgment dated 26/09/2022, this Appellate Tribunal disposed of following three set of Appeals No. 348-352/14, 1206-1207/11 and 1865-1866/11.
4. As noticed above, this application pertains only to Appeals No. 348-352/14.
5. Heard. File perused.
6. In the course of submissions on this application, Counsel for the applicant has submitted that in Para 21 of the judgment, this Appellate Tribunal has noted that the appellant challenged the order passed by OHA and the impugned assessments only as regards transfer of right to use trade mark / brand name "Eicher", but this Appellate Tribunal did not mention in this paragraph that the applicant had also challenged the impugned order and the impugned assessments on the point of "penalty".



7. It may be mentioned here that in the course of hearing on this review application, Counsel for the applicant has stated at Bar that in the review application and in the prayer clause (b) word "interest" has been inadvertently typed at places and this application may be considered only as regards penalty.

The prayer is that by way of review it may be clarified that the applicant had challenged the impugned order and the assessments by way of Appeal Nos. 348-352/14 even on the point of penalty.

8. On the other hand, Counsel for the Revenue has submitted that the application is not maintainable for review as prayed, particularly when in the judgment specific findings have been recorded as regards challenge to tax, interest and penalties. In this regard, Counsel for the Revenue has referred to the judgment passed by this Appellate Tribunal and particularly to the heading "as regards assessments of penalty", contention raised and discussion available from Para 73 to 80 onwards.
9. Regulation 24 of Delhi VAT (Appellate Tribunal) Regulations 2005 provides as to on which grounds application for review of an order lies. Said regulations read as under:

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.

2. Where it appears to the Tribunal that there is no sufficient ground for review, it shall reject the application.
3. 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

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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.”

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 which after the exercise of due diligence, was not within his knowledge or could not be produced at the time the order was passed by the Appellate Tribunal or on account of some mistake or error apparent on the face of record or for any sufficient reason.

10. Here, review is being sought while seeking ^{only} a clarification to the effect that the impugned order and impugned assessments were under challenged in Appeal Nos. 348-352/14 even as regards penalties.

On perusal of the judgment, it can safely be said that therein specific findings have been recorded as regards challenge to



tax, interest and penalties, headingwise, including the heading “as regards assessments of penalty”, while dealing with contention raised even on the point of penalties from Para 73 to 80 onwards.

11. In the given situation, it cannot be said that the judgment suffers from any error on the aforesaid point or calls for any review. As a result, this application is hereby dismissed.
12. 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: 26/12/2022

Narinder Kumar
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(Narinder Kumar)
Member (Judicial)

