

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

Appeal No.: 461/ATVAT/2022

Date of Judgment: 04/01/2023

M/s Bearing Syndicate,  
640, Hamilton Road Kashmeri  
Gate, Delhi- 110006

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

.....Respondent

Counsel representing the Appellant : Mohd. Wahaz Ahmad Khan.  
Counsel representing the Revenue : Sh. S.B. Jain.

**JUDGMENT**

1. On 22/03/2018, Learned Assessing Authority – VATO (W-18) framed assessment under Section 32 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act) and thereby raised demand of Rs. 2,41,284/- towards additional tax, pertaining to tax period – 4<sup>th</sup> Quarter, 2009-10.

Demand was raised due to the reason that the claim was submitted by the dealer for refund of Rs. 2,41,284/- for the tax period 4<sup>th</sup> Quarter 2009-10, but Input-Tax-Credit claimed by the dealer remained unverified as regards the extended dealer, and also because the dealer had not migrated to GST. The

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claim came to be declined in view of the provisions of section 40A read with section 9(2)(g) of DVAT Act.

Aggrieved by the above said demand of tax, dealer –assessee filed objections u/s 74 of DVAT Act before learned OHA.

Learned OHA allowed the objections vide order dated 07/11/2022, with the direction that refund submitted by the dealer shall be processed after verification. Accordingly, the dealer was directed to appear before VATO within a month from the receipt of the said order and to produce all the requisite documents by filing fresh application in form of DVAT 21. He further directed the Assessing Authority to process the refund within two months from the date of filing of the refund application.

The impugned order came to be passed while observing in the manner as:

“In view of the above facts and circumstances of the case and considering the grounds and submissions made in the present appeal, it is clearly established that the refund was rejected without the application of mind and without providing the opportunity of being heard by the objector dealer which is against the principles of natural Justice. Also, the assessing authority erred in providing the contrary material on record before disallowing the ITC claimed by the dealer. Therefore, in view of the facts and circumstances of the case, the undersigned is of the view that the refund shall



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be processed after the verification of the ITC based on which the refund is claimed by the objector. Hence, the impugned order dated 22.03.2018 is hereby set aside.”

2. Feeling aggrieved, dealer – objector has filed this appeal against the order dated 07/11/2022 passed by learned OHA.
3. Grievance of the dealer-appellant is that vide impugned order, learned OHA has remanded the matter to learned Assessing Authority, but the impugned order is against the provision of Section 38 of DVAT Act which provides that refund is to be issued after two months from the date of filling of return.

Learned Counsel for the appellant has contended that OHA did not appreciate that the matter had become time bared in view of the provisions of Section 34 and 38 of DVAT Act and as such the impugned assessment disallowing claim of refund and ITC pertaining to 4<sup>th</sup> Quarter of the year 2009-10, after a period of eight years, was illegal and without jurisdiction.

4. In the course of arguments, counsel for the appellant has filed copy of return dated 24/04/2010 claiming refund of Rs. 2,41,283/-. On behalf of the Revenue, it is not being disputed that return for the tax period 01/01/2010 to 31/03/2010 was filed on 24/04/2010. Admittedly, this is a case where the tax period for the dealer claiming refund is a quarter. In view of provisions of section 38(2) of DVAT Act, refund was to be processed within two months after the date on which the return

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was furnished or claimed for refund was made. Herein, refund having been disallowed on 22/03/2018, the order passed by the Assessing Authority can safely be said to be barred by limitation.

5. Furthermore, for rejection of ITC claim, Assessing Authority observed in the impugned assessment that the same was not verified upto extended dealer. However, the Assessing Authority has not given any details of any such extended dealer. Admittedly, no notice appears to have been issued by the Assessing Authority to the appellant-assessee or any such extended dealer *before rejection of ITC claim.*
6. In the given situation, the impugned assessment dated 22/03/2018 having been rejected by learned OHA, it was not a fit case for remand by learned OHA with direction to the Assessing Authority to process the refund after verification of ITC, particularly when the time prescribed for the same stood expired.
7. In view of the above discussion, this appeal is allowed and the impugned assessment dated 22/03/2018 pertaining to 4<sup>th</sup> Quarter of 2009-10 framed by learned Assessing Authority and the impugned order passed by learned OHA, whereby he remanded the matter to the Assessing Authority, are set aside. Revenue to take steps in accordance with law for refund of the amount due *to the dealer.*

*23/11/23*



8. File be consigned to the record room. Copy of the judgment 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 : 04/01/2023

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(Narinder Kumar)  
Member (J)

