

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

Appeal No. : 07-09/ATVAT/23
Date of Judgment: 21/02/2023

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 : Mohd. W. A. Khan.
Counsel representing the Revenue : Sh. S. B. Jain.

JUDGMENT

1. On 07/11/2022, learned Objection Hearing Authority (hereinafter referred to as OHA) allowed objections filed by the dealer-appellant herein, u/s 74 of Delhi Value Added Tax Act (hereinafter referred to as DVAT Act) by observing in the manner as:

“7. 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 refunds were 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



Narinder Kumar
21/2/2023

of the case, the undersigned is of the view that the refund shall be processed after the verification of the ITC based on which the refund is claimed by the objector. Hence, the impugned orders dated 22.03.2018 are hereby set aside. The objector dealer shall appear before the VATO within one month from the receipt of this order alongwith all the requisite documents by filing a fresh application in Form DVAT-21 and the assessing officer is directed to process the refunds claimed by the objector dealer as per the provisions laid down under the DVAT Act, 2004 within two months from the date of the refund application. Thus, the objections filed by the objector dealer are allowed in aforesaid terms.”

2. The above said objections came to be so disposed of while dealing with the following grounds raised by Counsel for the objector during hearing on objections:

“6. Sh. Wahed Ahmed Khan, Advocate appeared for the objector and reiterated the grounds taken in the objections and the written submissions. During the hearing, he argued that the refund applications are wrongly rejected as the impugned orders were passed without application of mind. Further, the Counsel argued that the impugned orders passed by the assessing authority were without providing an opportunity of being heard and also without even providing the contrary material on record.”

3. Feeling aggrieved by the impugned order, dealer-objector-assessee has come up in appeal by filing this set of 3 appeals pertaining to 1st, 3rd and 4th Qtr. of the year 2013-14.

21/2



4. Objections were filed before learned OHA challenging default assessment of tax dated 22/03/2018 framed by learned Assessing Authority u/s 32 of DVAT Act whereby he raised following additional demand of tax:

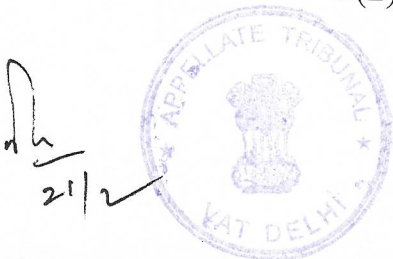
S.No.	Reference No.	Tax Period	Disputed amount of Tax	Objection ID
1.	150082514584	1 st Qtr 2013-14	Rs. 52,858/-	653603
2	150082511064	3 rd Qtr 2013-14	Rs.91,837/-	653612
3.	150082515628	4 th Qtr 2013-14	Rs.78.337/-	653618

5. While framing assessment for the tax period – 1st Qtr. of 2013, learned Assessing Authority recorded the following reasons:

“The dealer claimed refund of Rs.52,857/- for the tax period 1st Qtr 2011 but ITC claimed by the dealer is not verified upto extended dealer. Hence, I have no other option except to disallow ITC claimed by dealer u/s 40A read with 9(2)g of DVAT Act, 2004.”

6. While framing assessment for 3rd Qtr. of 2013, learned Assessing Authority recorded the following reasons:

“The dealer claimed refund of Rs.91,836/- for the tax period 2nd Half yearly 2010 but ITC claimed by the dealer is not verified upto extended dealer. Hence, I have no other option except to disallow ITC claimed by dealer u/s 40A read with 9(2)g of DVAT Act, 2004.”



7. While framing assessment as regards the last - 4th Qtr. of 2013, learned Assessing Authority recorded following reasons:

“The dealer claimed refund of Rs.78,336/- for the tax period 4th Qtr 2012 but ITC claimed by the dealer is not verified upto extended dealer. Hence, I have no other option except to disallow ITC claimed by dealer u/s 40A read with 9(2)g of DVAT Act, 2004.”

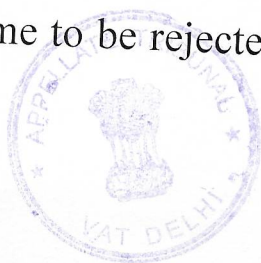
8. Arguments heard. File perused.
9. The first argument advanced by learned Counsel for the appellant is that rejection of refund by the Assessing Authority was barred by limitation as the claim of refund was to be considered and decided within two months.

Further, it has been submitted that learned OHA instead of remanding the matter to learned Assessing Authority, with the above directions, should have set aside the impugned assessments, the same having been framed in arbitrary manner and without providing opportunity to the dealer of being heard.

10. As noticed above, assessments were framed by learned Assessing Authority on 22/03/2018, and same pertained to 1st, 3rd and 4th Qtr. of the year 2013-14.

On the other hand, learned counsel for the Revenue has submitted that this is a case where ITC claimed by the dealer came to be rejected by the Assessing Authority, and not a case

dh
21/2

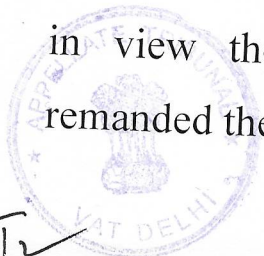


where refund was rejected, and as such learned OHA was not justified in issuing direction as regards refund.

Learned counsel for the Revenue has further submitted that when the dealer-objector submitted before learned OHA, at the time of arguments on objections, that the Assessing Authority had framed assessments without providing opportunity of being heard, learned OHA was justified in remanding the matter to learned Assessing Authority for verification of ITC, while providing opportunity to the dealer of being heard. Learned counsel has accordingly urged that when the matter was remanded by learned OHA, the dealer cannot be said to be a person aggrieved by the said directions as regards framing of assessments on the point of ITC claim put forth by the dealer.

11. As noticed above, while framing the three assessments pertain to 1st, 3rd and 4th quarter of the year 2013, learned Assessing Authority disallowed ITC claim of the dealer due to the reason that the same was not verified.

On the other hand, before learned OHA, objector claimed in the objections that the assessments were framed without providing opportunity of being heard to it i.e. the dealer-assessee. Thereupon, learned OHA observed that the assessments were framed without providing opportunity of being heard. Keeping in view the principles of natural justice, learned OHA remanded the matter.



12. In view of the submissions put forth by counsel for the objector before learned OHA as regards non providing of opportunity of being heard, before rejection of ITC claim, no fault can be found with the impugned order passed by learned OHA whereby the matter has been remanded. When the matter came to be remanded in view of the submission on behalf of the objector, it cannot be said that the dealer-objector was left with any grievance as regards remand of the matter for verification of ITC claim, after providing it an opportunity of being heard.

However, as regards refund, when learned OHA issued directions to the dealer-objector to file fresh application in Form DVAT 21 and also directed the Assessing Authority to process the refund, said directions can safely be said to be beyond the scope of the assessments. An assessment u/s 32 of DVAT Act is an assessment of tax and interest, and does not pertain to refund or allowing or disallowing thereof.

Furthermore, herein, while framing assessments, Assessing Authority did not disallow claim of refund. In the course of arguments, learned counsel for the Revenue has submitted that no order regarding rejection of refund has been passed by the Assessing Authority at any point of time and that what the Assessing Authority has disallowed is the claim of ITC submitted by the dealer.

21/2



In the given circumstances, it can safely be said that learned OHA has exceeded the scope while making observations and issuing directions on the point of refund. Therefore, the impugned order, as regards observations and directions on the point of refund, deserves to be set aside. I order accordingly.

13. As regards disallowing of ITC claim, learned Assessing Authority was required to specify as to in respect of which transaction the ITC was being rejected/disallowed. He was also required to specify as to in respect of which extended dealer the said claim was being rejected/disallowed for want of verification. In the impugned assessments, these two aspects have not been specified. There is nothing in the impugned assessments that the other dealer was ever associated in the proceedings or enquiry.

For the aforesaid reasons, the impugned assessments u/s 32 of DVAT Act, for 1st quarter, 3rd quarter and 4th quarter of 2013 deserve to be set aside and matter needs to be remanded to learned Assessing Authority for decision afresh as regards ITC claim of the dealer. For the same reasons, impugned order passed by learned OHA also deserves to be set aside as regards ITC claim of the dealer.

Consequently, while disposing of these three appeals, matter is remanded to learned Assessing Authority for fresh assessments in respect of the three tax periods i.e. 1st, 3rd and 4th quarter of



nlc
21/2

2013 for due verification of ITC claim of the dealer-assessee, after providing reasonable opportunity to the dealer of being heard.

14. Dealer to appear before learned Assessing Authority on 03/03/2023.
15. 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: 21/02/2023.



Narinder Kumar
21/2/2023
(Narinder Kumar)
Member (Judicial)