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

Review Application No.: 05/ATVAT/22
(As regards Appeal No.: 1344/ATVAT/11)
Date of Order: 16/03/2023

M/s. Electronic Paradise (North)
13, Ground Floor,
Vaishali, Pitampura,
New Delhi – 110 034. .....Applicant

V.

Commissioner of Trade & Taxes, Delhi .....Respondent

Counsel representing the Applicant : Sh. S. K. Verma.
Counsel representing the Revenue : Sh. P. Tara.

ORDER

1. Present Review application came to be presented before the Registry on 13/10/22, with prayer for review of judgment dated 16/08/2022 passed by this Appellate Tribunal.
2. Case of the dealer – applicant is that u/s 28 of DVAT Act, it had applied for furnishing of revised return for the tax periods February 2009, March 2009, April 2010, May 2010, June 2010, July 2010and August 2010 on the ground that excess tax was paid by the dealer.

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3. Objections filed u/s 28 of DVAT Act were rejected and thereby request of the dealer-appellant-applicant to submit revised returns was declined.

4. Accordingly, the dealer filed appeal no. 1344/ATVAT/11.before this Appellate Tribunal.

5. Vide judgment dated 16/08/2022, this Appellate Tribunal disposed of appeal no. 1344/ATVAT/11 while upholding the order dated 16/11/2011 passed by learned Additional Commissioner (Special Zone).

Subsequently, dealer has filed this review application.

6. In brief, case of the dealer-appellant, as per memorandum of appeal, was that the applicant used to purchase from LG Electronics electronic goods for resale as its distributor in the defined territory. The dealer received periodical credit notes from LG Electronics representing the discount given as per pre-sale settlement between the parties. However, due to mistake in legal interpretation of the provisions of DVAT Act, the dealer – applicant reversed input tax credit on all such credit in respect of the above said tax periods, when actually LG Electronics had paid tax on their total sales - turnover, without adjusting their sale price with the value of the credit notes issued to the dealer. In other words, the seller had not reduced the sale price for transactions done with the dealer–applicant.

Further, it was case of dealer that during correspondence by the dealer-applicant with LG Electronics, later the seller confirmed

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through certificates issued by them that no tax benefit had been taken by them in the returns filed by LG Electronics with the department for the relevant tax periods.

7. As claimed in the review application, this Appellate Tribunal has dismissed the appeal filed by the dealer-applicant without properly appreciating legal position on the issue and primarily on the ground of statements recorded by the selling dealers on some of the credit notes that the purchasing dealer is required to reverse the input tax credit.

In the review application, applicant has alleged that feeling *aggrieved on purely legal questions and interpretation of the law* vis-a-vis power of the Appellate Tribunal as a final fact finding authority, applicant is seeking review of the judgment raising the following questions of law for proper interpretation of law:

(1) Whether the Appellate Tribunal 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 not confirmed and without any adjudication by any authority that selling dealers had reduced their output tax liability?

(2) Whether the appellate tribunal was justified, without any legal findings, that the appellant was mandated by the selling dealers to reduce input tax credit on the value of credit notes and whether such averments on the documents of the selling dealers were statutory in nature and binding upon the appellant?

8. In Para No. 3, applicant has alleged that in the course of arguments in the appeal, judgments were quoted but the Tribunal has misapplied itself on the interpretation of the said judgments.

However, in Para Nos. 3 and 4 of the application, no reference has been made to the particulars of the decisions said to have been quoted.

9. One of the grounds put forth by the applicant in Para No. 6 of the application is that this Appellate Tribunal could not ignore that indirect tax is based on documents and till adjudication is done on documents, no view can be taken for or against the appellant.

This assertion has been made in respect of the argument that was advanced on behalf of the Revenue, in the course of arguments, in the appeal that the selling dealer had mentioned in a number of credit notes that purchaser was required to reduce the proportionate input tax credit.

10. Another averment made by the applicant is that the Appellate Tribunal failed to appreciate that Counsel representing the appellant had referred to credit notes to show that sale order references were there which could be linked with each invoice, if opportunity was provided.

The grievance is that this argument perhaps escaped the attention of this Appellate Tribunal and further that no

adjudication has been done on this issue and rather the observations made by the OHA have been relied upon.

11. Review is also sought on the allegation that "without any statutory force and adjudication in the judgment", this Appellate Tribunal has drawn a conclusion based on a note written by the supplier to the fact that the selling dealer had taken benefit on the basis of said credit notes, and further alleged that the issue raised by the applicant is as to whether any note appended by the selling dealer on the invoice or on the credit notes can have a statutory force to bind the Tribunal or the purchasing dealer.

12. It may be mentioned here that during pendency of the review application, on behalf of the applicant two applications came to be filed i.e. M.A. No. 16/23 seeking amendment of the review application so as to raise additional ground for review, and the other i.e. M. A. No. 649/22 seeking permission for filing of additional document i.e. certificate dated 05/12/2022 in respect of credit notes said to have been issued by the supplying dealer. On 10/03/2023, counsel for the Revenue submitted that counsel for the applicant be allowed to argue the additional ground sought to be advanced by way of M.A. No. 16/23. Thereupon, learned counsel for the applicant expressed readiness to argue the additional ground while arguing the review application.

The additional ground sought to be raised in the review application is that the dealer has a certificate issued by the

selling dealer that the selling dealer had neither reduced output tax liability nor refunded amount of VAT on the credit notes issued for the given period, and that said certificate is relevant in this matter, and that the dealer could not procure the certificate earlier, at the time of hearing of appeal.

Then, learned counsel for the parties argued the review application and also the other application M.A. No. 649/22 seeking permission to lead additional evidence.

As regards the other application No. 649/22, vide separate order of even date, same has been dismissed.

13. At this stage, Regulation 24 of DVAT Regulations needs to be reproduced for ready reference. Same reads as under :

> "(1) Subject to the provisions contained in sub-section (2) of section 76 of the Act and the rules made thereunder, 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.
>
> (2) Where the Tribunal is of opinion that the application for review should be granted, it shall grant the same:
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> 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."

In view of the above provision pertaining to review of order, on the ground of discovery of new evidence, 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 was not within his knowledge or could not be produced at the time the order was passed by the Appellate Tribunal.

14. In the review application, the applicant has itself admitted the legal proposition that a party is not entitled to seek review of judgment merely for the purpose of a rehearing and a fresh decision of the case.

15. In **S. Nagaraj & Others v. State of Karnataka**, 1993 Supp. (4) SCC 595, cited by counsel for the applicant, Hon'ble Apex Court observed that justice is a virtue that transcends all barriers; that neither the rules of procedure nor technicalities of law can stand in its way; that the order of the Court should not be prejudicial to anyone.

16. In the course of arguments in the appeal, it was argued on behalf of the appellant that Learned Additional Commissioner did not appreciate the full scope of the provisions of Rule 45 read with Section 10 of DVAT Act; that only section 8 of DVAT Act was

relevant; that while making observations in para 12 of the impugned order, OHA exceeded the scope; and that OHA did not peruse the credit notes.

On the other hand, learned counsel for Revenue had contended while arguing the appeal that the appellant- a buying dealer correctly reduced ITC as it was liable to reduce the purchase price in view of a specific note given by the selling dealer-LG in a number of the credit notes the purchaser was required to reduce the proportionate ITC; that the OHA provided opportunity to the dealer to prove its claim and only after going through the contents of the credit notes observed that the credit notes neither contained invoice number(s) nor satisfied the quality of credit notes as provided under Rule 45 of DVAT Rules.

Therefore, in the appeal learned counsel for Revenue had urged that the impugned order did not suffer from any illegality or irregularity, and the appeal deserved to be dismissed.

17. While dealing with the above said contention, this Appellate Tribunal observed in the manner as:

> "Under section 28(2) of DVAT Act, an objection would be maintainable where a dealer discovers a mistake or error in any return furnished by him under the Act and as a result of said mistake or error the dealer paid more tax than was due under this Act.
>
> Existence of an assessment
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> It is significant to note that such an objection would be maintainable against the assessment. So, there must be an

assessment. In the course of arguments, on query, counsel for the appellant has displayed ignorance if any assessment was framed on the basis of the return(s) for the given tax period(s) or if any objection was or was not filed by the dealer against such assessment.

Subsequent discovery of Mistake or error in the return

As required under section 28, it was for the dealer-appellant to prove before OHA that it was a case of mistake or error in the return(s) for the relevant tax period(s), which was discovered subsequently.

In the impugned order, while referring to the case of dealer-Objector in the objections observed that it was claimed to be a case where dealer inadvertently reversed tax credit during the above said tax periods on the credit notes issued by the selling dealer. The reason as put forth by the objector was that the certificate issued by the selling dealer that it had not taken any tax benefit escaped its attention.

In the impugned order, learned OHA has observed that the dealer-objector was required to reduce the purchase price and to pay tax on the value addition at his own, which he rightly did; that the net effect of any credit note is a less purchase price; that the dealer committed no mistake while reducing the tax credit; and as such its case is not covered by the provisions of section 28 of DVT Act.

In the memorandum of appeal, case of dealer-appellant is that on subsequent request it was informed by the selling dealer-LG that " No Tax benefit had been taken" by them-the selling dealer-for the relevant tax periods. Further, it was averred in the appeal that copies of credit notes received were being separately given in the form of Paper Book.

However, it may be mentioned here that no such credit notes were furnished with the appeal. Only on 12/8/2022 at the time of final arguments counsel for the appellant presented

an application to place on record copies of credit notes received from the selling dealer. At the time of final arguments, counsel for the appellant has submitted that inadvertently these copies could not be submitted earlier. In the application, it has been alleged that copies of credit notes were also submitted before OHA. In view of this submission, when the prayer for their production has not been opposed, copies of credit notes are taken on record.

So far as contention on behalf of the dealer that OHA did not go through the credit notes, in view of the discussion in the impugned order as regards the credit notes it cannot be said that same were not considered by the OHA.

In para 14 of the impugned order, OHA observed as under:

"The credit note in the instant case does not fulfil the requirement of rule 45 as credit note for each transaction should have been separately issued. A credit note issued without containing details of invoices against which the same is issued, cannot be considered for adjustment u/s 10 of DVAT Act."

In the course of arguments, Learned counsel for the appellant has candidly admitted that tax invoice number(s) against which the credit notes are stated to have been issued do not find mention in the credit notes relied upon.
Tax invoice number helps in co-relating itself the credit note and vice versa. In absence of tax invoice, it cannot be made out as to against which transaction or tax invoice said credit note has been given. Authorities are required to strictly follow the rules framed under the Act. When Rule 45 of DVAT Rules provides that serial number of relevant tax invoice affected by the credit note is also to be mentioned in the credit note for the purposes of section 51 of the Act, Learned OHA correctly decided not to rely upon the credit notes."

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18. On behalf of the applicant, reliance has also been placed on decision in **Patnaik & Co. Ltd. v. The Commissioner of Income Tax**, 1986 AIR 1483, to contend that this Appellate Tribunal did not adjudicate the core issue i.e. of reversal input tax credit, and as such this Appellate Tribunal fell in error, which requires review.

I have gone through the above said decision relied on behalf of the applicant. Therein, Hon'ble Apex Court, clearly observed as under:

> "23.2. It is now well settled that the Appellate Tribunal is the final fact-finding authority under the Income-tax Act and that the Court has no jurisdiction to go behind the statements of fact made by the Tribunal in its appellate order. The Court may do so only if there is no evidence to support them or the Appellate Tribunal has misdirected itself in law in arriving at the findings of fact. But even there the Court cannot disturb the findings of fact given by the Appellate Tribunal unless a challenge is directed specifically by a question framed in a reference against the validity of the impugned findings of fact on the ground that there is no evidence to support them or they are the result of misdirection in law."

19. In view of the findings already recorded by this Appellate Tribunal on the issue of reversal of input tax credit, on the basis of credit notes, it cannot be said that any error crept in the judgment by this Appellate Tribunal, calling for review of the decision.

20. Another contention advanced on behalf of the appellant in the appeal was that learned OHA had exceeded scope of enquiry. Said contention was rejected while observing that learned OHA had taken into consideration relevant facts to determine the issue involved, keeping in view the ingredients of Section 28 of DVAT Act.

Ultimately, the appeal was dismissed while observing in the manner as:-

> "7. Section 28(2) of DVAT Act, 2004, as it was in enforce during the relevant period, being the relevant provision applicable in the present case is reproduced below:
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> > "If, within the four years of the making of an assessment, any person discovers a mistake or error in any return furnished by him under this Act, and he has as a result of the mistake or error paid more tax than was due under this Act, he may lodge an objection against the assessment in the manner and subject to the conditions stipulated in section 74 of this Act."
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> 8. While passing the impugned order, Learned Additional Commissioner referred to provisions of Section 10 (1) and Section 51(a) of the Act read with Rule 45 of the DVAT Rules.
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> Learned Additional Commissioner was of the opinion that benefit of credit note could have been obtained u/s. 10(1) of the DVAT Act only in case credit notes were issued u/s. 51 (a) of DVAT Act. He went on to observe that credit note in the instant case did not fulfil the requirement of Rule 45 as credit note for each transaction should have been separately issued and a credit note issued without containing details of

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invoice, against which the same was issued, could not be considered for adjustment u/s. 10 of DVAT Act.

Ultimately, Learned Additional Commissioner was of the view that the dealer did not commit any mistake while reducing its input tax credit on the credit notes received from the selling dealer and further that in case revised return was allowed, that would defeat the provisions of Section 10(1) read with Section 51 of DVAT Act 2004 and Rule 45 of DVAT Rules, 2005.It has been argued on behalf of the appellant that Learned Additional Commissioner did not appreciate the full scope of the provisions of Rule 45 read with Section 10 of DVAT Act; that only section 8 of DVAT Act was relevant; that while making observations in para 12 of the impugned order, OHA exceeded the scope; and that OHA did not peruse the credit notes. In support of his contentions, learned counsel for appellant has relied on following two decisions:

(i) M/s Andhra Agencies v. State of A.P., decided by Hon'ble Apex Court on 18.11.2008 (complete particulars of the case and that of citation not made available in the text provided by counsel for the appellant).

(ii) Challenger Computers Ltd. v. Commissioner of Trade & Taxes, Delhi, ST. Appeal 76/2014 decided by Hon'ble High Court of Delhi on August 21, 2015.

9. On the other hand, learned counsel for Revenue has contended that the appellant - a buying dealer correctly reduced ITC as it was liable to reduce the purchase price in view of a specific note given by the selling dealer-LG in a number of the credit notes that purchaser was required to reduce the proportionate ITC; that the OHA provided opportunity to the dealer to prove its claim and only after going through the contents of the credit notes observed that the credit notes neither contained invoice number(s) nor

satisfied the quality of credit notes as provided under Rule 45 of DVAT Rules. Therefore, learned counsel has urged that the impugned order does not suffer from any illegality or irregularity, and this appeal deserves to be dismissed.

10. As noticed above, under section 28(2) of DVAT Act, an objection would be maintainable where a dealer discovers a mistake or error in any return furnished by him under the Act and as a result of said mistake or error the dealer paid more tax than was due under this Act.

Existence of an assessment

It is significant to note that such an objection would be maintainable against the assessment. So, there must be an assessment. In the course of arguments, on query, counsel for the appellant has displayed ignorance if any assessment was framed on the basis of the return(s) for the given tax period(s) or if any objection was or was not filed by the dealer against such assessment.

Subsequent discovery of Mistake or error in the return

As required under section 28, it was for the dealer-appellant to prove before OHA that it was a case of mistake or error in the return(s) for the relevant tax period(s), which was discovered subsequently.

In the impugned order, while referring to the case of dealer-Objector in the objections observed that it was claimed to be a case where dealer inadvertently reversed tax credit during the above said tax periods on the credit notes issued by the selling dealer. The reason as put forth by the objector was that the certificate issued by the selling dealer that it had not taken any tax benefit escaped its attention.

In the impugned order, learned OHA has observed that the dealer-objector was required to reduce the purchase price and to pay tax on the value addition at his own, which he rightly did; that the net effect of any credit note is a less

purchase price; that the dealer committed no mistake while reducing the tax credit; and as such its case is not covered by the provisions of section 28 of DVT Act.

In the memorandum of appeal, case of dealer-appellant is that on subsequent request it was informed by the selling dealer-LG that " No Tax benefit had been taken" by them- the selling dealer-for the relevant tax periods. Further, it was averred in the appeal that copies of credit notes received were being separately given in the form of Paper Book.

However, it may be mentioned here that no such credit notes were furnished with the appeal. Only on 12/8/2022 at the time of final arguments counsel for the appellant presented an application to place on record copies of credit notes received from the selling dealer. At the time of final arguments, counsel for the appellant has submitted that inadvertently these copies could not be submitted earlier. In the application, it has been alleged that copies of credit notes were also submitted before OHA. In view of this submission, when the prayer for their production has not been opposed, copies of credit notes are taken on record.

So far as contention on behalf of the dealer that OHA did not go through the credit notes, in view of the discussion in the impugned order as regards the credit notes it cannot be said that same were not considered by the OHA.

In para 14 of the impugned order, OHA observed as under:

> "The credit note in the instant case does not fulfil the requirement of rule 45 as credit note for each transaction should have been separately issued. A credit note issued without containing details of invoices against which the same is issued, cannot be considered for adjustment u/s 10 of DVAT Act."

In the course of arguments, Learned counsel for the appellant has candidly admitted that tax invoice number(s)

against which the credit notes are stated to have been issued do not find mention in the credit notes relied upon.

Tax invoice number helps in co-relating itself the credit note and vice versa. In absence of tax invoice, it cannot be made out as to against which transaction or tax invoice said credit note has been given. Authorities are required to strictly follow the rules framed under the Act. When Rule 45 of DVAT Rules provides that serial number of relevant tax invoice affected by the credit note is also to be mentioned in the credit note for the purposes of section 51 of the Act, Learned OHA correctly decided not to rely upon the credit notes.

11. In the course of arguments, learned counsel for the appellant has referred to certain credit notes for the months of June, July & August, 2010 to which simply a note has been appended to the following effect:

> "Purchaser are required to reduce the proportionate Input Tax Credit against the corresponding purchases."

Firstly, this unsigned note cannot be considered or treated as a certificate. Secondly, as per this note appended by the selling dealer, it can be said that the selling dealer had required the buying dealer-appellant to reduce proportionate ITC. In other words, when the buying dealer was required to do so, the selling dealer apprised the appellant that it had taken benefit against the said credit notes to which said note was appended.

As a result, purchasing dealer was not entitled to claim tax credit on the basis of said credit notes, particularly, in absence of any certificate by the selling dealer in favour of the purchasing dealer that it had not taken benefit against the said credit notes.

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In Challenger Computers' case (supra), appellants were able to produce certificates from the selling dealers clarifying that they had neither claimed any output tax credit nor sought any refund, and the entire amount of VAT collected by the selling dealer from the buying dealer stood remitted to the department. In this situation, Hon'ble High Court observed that there was neither any question of the selling dealer raising a credit note in accordance with Rule 45 of DVAT Rules, resorting to procedure under section 51(a) nor the dealers were required to resort to the procedure under section 8(1) of DVAT Act or the buying dealer to resort to the procedure under section 10(1) of the Act.

In view of the above discussion, decision in Challenger Computers' case does not come to the aid of the dealer - appellant.

12. As regards application of provisions i.e. section 8(1) and section 10 of DVAT Act, in Challenger Computers' case, Hon'ble High Court clearly observed that question of purchasing dealer adjusting input tax in terms of section 8(1) would not arise where the selling dealer does not give any credit note under section 51(a) to the purchasing dealer. As regards relevant provision of adjustment of tax credit by the dealer, at the same time, Hon'ble High Court observed that it is clear from the scheme that the same would necessarily involve issuance of credit notes under section 51(a) of DVAT Act as without issuance of such credit notes, it would not be open for the buying dealer to adjust the tax credit in terms of section 10 of the Act.

In view of the above observations by Hon'ble High Court, there is no merit in the contention raised by counsel for the appellant that section 10 of DVAT Act does not at all permit adjustment of tax credit or that observation made by OHA while referring to provisions of section 10 of the Act in this regard is wrong.

13. In the course of arguments, learned counsel for the appellant has referred to some of the credit notes i.e of Feb. & March, 2009 to which a certificate has been appended to the following effect:

> "This is to certify that, we have not claimed any tax benefit against this Credit Note."

This certificate available as a foot note to the limited number of credit notes was of no avail to the dealer-appellant especially for want of tax invoice number in the credit notes, when the same could not be co-related to particular transaction for the purposes of verification of the claim.

It is not case of the dealer-appellant that OHA did not allow it to produce or prove before him credit note(s) depicting tax invoice number. Onus to prove its claim was on the buying dealer. Buying dealer-appellant could collect valid credit notes depicting tax invoice number(s) from the selling dealer or could summon its representative to lead convincing evidence in this regard before OHA, but no such step was taken. It was afforded reasonable opportunity to discharge its burden but it failed to co-relate these credit notes to particular transaction(s) for the purposes of verification of claim.

While closing the arguments, counsel for the appellant submitted that appeal be adjourned for a week's time for production of documents after collecting the same from the selling dealer

It remains unexplained as to why the buying dealer was not diligent enough to take such steps before OHA and ever since the rejection of the objections or in seeking such permission while filing the appeal about 11 years back.

Therefore, I see no merit in this last contention & submission of counsel for the appellant as well."

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21. While arguing the appeal, reference was made to some of the credit notes i.e. of February & March 2009. Certificate to the following effect was found appended as a foot note to a limited number of credit notes:

> "This is to certify that, we have not claimed any tax benefit against this Credit Note."

This Appellate Tribunal observed that said certificate was of no avail to the dealer-appellant especially for want of number of the tax invoice in the credit notes, when the same could not be co-related to particular transaction for the purposes of verification of the claim of the assessee.

It was further observed that it is not case of the dealer-appellant that OHA did not allow it to produce or prove before him credit note(s) depicting tax invoice number. Onus to prove its claim was on the buying dealer. Buying dealer-applicant could collect valid credit notes depicting tax-invoice-number(s) from the selling dealer or could summon its representative to lead convincing evidence in this regard before OHA, but no such step was taken. It was afforded reasonable opportunity to discharge its burden, but it failed to co-relate these credit notes to particular transaction(s) for the purposes of verification of claim.

22. While arguing the appeal, reference was made to certain credit notes for the months of June, July, August 2010.

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While dealing with these credit notes, this Appellate Tribunal found that simply a note had been appended to the said credit notes, and the note read as under:

> "Purchaser are required to reduce the proportionate Input Tax Credit against the corresponding purchases."

The Appellate Tribunal went on to observe:

> "Firstly, this unsigned note cannot be considered or treated as a certificate. Secondly, as per this note appended by the selling dealer, it can be said that the selling dealer had required the buying dealer-appellant to reduce proportionate ITC. In other words, when the buying dealer was required to do so, the selling dealer apprised the appellant that it had taken benefit against the said credit notes to which said note was appended."

Ultimately, this Appellate Tribunal held that purchasing dealer was not entitled to claim tax credit on the basis of above said credit notes, particularly in absence of any certificate by the selling dealer in favour of the purchasing dealer that it had not taken benefit against the said credit notes.

23. Counsel for the applicant has relied on decision in **M/s Andhra Agencies v. State of A.P**, decided by Hon'ble Apex Court on 18/11/2008 (complete particulars of the case/citation not made available in the text provided by the counsel), and submitted that the said decision was cited by him at the time of arguments on appeal, but this Appellate Tribunal did not apply the said decision to the given facts, and as such error has crept in the decision, which needs review.

It may be mentioned here that said decision relied upon by the counsel for the applicant even at the time of arguments on appeal, was carefully gone through and discussed, as regards facts of the present case, and then it was observed in the manner as:

> "14. In M/s Andhra Agencies's case (supra) the issue involved was as to whether the value representing credit notes issued by the manufacturers to the distributors were to be included in the taxable turnover. All the assesses were carrying business in liquor as distributors of the brand manufactured by the companies of Hyderabad. The assesses were intermediate dealers liable to tax only on differential turnover i.e. after excluding the turnover which had already suffered tax.
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> Therein, it was submitted on behalf of appellants that the whole seller had paid tax on the whole amount before adjustment of the credit notes.
>
> It subsequently transpired that the assesses had received periodical credit notes representing the discount. These were not taken into account. It was conceded that books of account were not produced before the authorities. There was no document to show that selling dealer had paid tax. Certain documents relating to purchases by the assesses were produced to show the tax amount paid by the selling dealers, but these documents were not considered by the Revenue due to the reason that books of account had not been produced by the assessee. The stand of assesses was that books were not produced because documents had been seized by certain taxing authorities. In this situation, opportunity sought to produce the documents before the assessing Authority was allowed.
>
> The decision in Andhra Agencies is distinguishable on facts. Here, all the credit notes are stated to have been made

available to the OHA and he recorded his observations and disposed of the objections after going through their contents and providing reasonable opportunity of hearing to the dealer-objector.

17. In view of the above discussion, I find that the dealer – appellant failed to establish all the ingredients of section 28 of DVAT Act; that its claim that due to mistake or error the dealer paid more tax than was due under this Act and that certificates were issued by LG that no tax benefit had been claimed by them i.e. the selling dealer. Therefore, Learned OHA was justified in rejecting the objections and disallowing the prayer for furnishing of revised return."

In view of the reasons already recorded and reproduced above, there is no merit in the contention raised on behalf of the applicant that this Appellate Tribunal fell in error as regards application of decision in M/s Andhra Agencies's case (supra).

24. Not only the above said decision was considered, another decision titled as **Challenger Computers Ltd. v. Commissioner of Trade & Taxes, Delhi**, ST. Appeal 76/2014, ~~decided~~ by Hon'ble High Court of Delhi on August 21, 2015, was also considered.

In Challenger Computers' case (supra), appellants were able to produce certificates from the selling dealers clarifying that they had neither claimed any output tax credit nor sought any refund, and the entire amount of VAT collected by the selling dealer from the buying dealer stood remitted to the department. In this situation, Hon'ble High Court observed that there was neither

any question of the selling dealer raising a credit note in accordance with Rule 45 of DVAT Rules, resorting to procedure under section 51(a) nor the dealers were required to resort to the procedure under section 8(1) of DVAT Act or the buying dealer to resort to the procedure under section 10(1) of the Act.

In view of the above discussion, this Appellate Tribunal observed in its decision that decision in Challenger Computers' case did not come to the aid of the dealer -appellant.

25. It may be mentioned here that while closing arguments on appeal, it was submitted by counsel for the appellant that appeal be adjourned for a week's time for production of documents after collecting the same from the selling dealer.

The Appellate Tribunal rejected this prayer while observing that the buying dealer had not explained as to why it was not diligent enough to take steps for production of documents before OHA and ever since the rejection of the objections or in making such prayer while the appeal remained pending for about 11 years.

Counsel for the ~~applicant~~ Revenue has rightly submitted that application seeking additional evidence in the form of certificate from the supplying dealer came to be filed during pendency of this review application, by way of an afterthought, as by then Revenue had put forth its reply to the review application.

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26. It may be mentioned here that in the course of arguments on this review application, counsel for the applicant has submitted that subsequently the selling dealer changed its stance.

In this regard, suffice it to say that review cannot be sought in such like situation, where stance is changed subsequent to the decision by the Court or the Appellate Tribunal.

27. Counsel for the applicant contended that it was for the Revenue to rebut whatever material was placed on record by the appellant.

On the other hand, counsel for ~~the~~ Revenue has rightly contended that in view of provisions of Section 28 of DVAT Act, burden to prove the objections filed u/s 28 of DVAT Act was on the objector – appellant, particularly when the appellant had itself reduced the ITC in the return, by way of self-assessment.

As already noticed above, dealer did not take any step to call or examine the supplying dealer or its representative as a witness before the OHA to substantiate its claim.

28. In view of the findings recorded by this Appellate Tribunal in the decision of issues involved in the appeal, the ground taken in the review application that the Appellate Tribunal indulged in cherry-picking or ignoring evidence, is baseless and also not happily worded.

29. Applicant has alleged in the application that non-consideration of the subsequent amendment introduced to the law either on a

prospective basis or retrospective basis even in the face of a detailed order passed. But, surprisingly, in the course of arguments on this application, no such submission has been put forth by counsel for the applicant.

30. In the application, applicant has alleged that this is a case of non-consideration of the benevolent doctrine of Stare-Decisis. However, in the course of arguments on the review application, no such point has been urged to show as to how doctrine of stare-decisis was applicable to the given facts.

31. In the review application, it has been alleged that decision by this Appellate Tribunal suffers from error by placing reliance upon the pronouncements on its own motion which have since been overturned even in case of a detailed order being passed. Surprisingly, in the course of arguments on review application, counsel for the applicant has not put forth any such submission. He has also not point out as to which decisions relied on by this Appellate Tribunal of its own, stood overturned.

32. Whatever evidence was placed on record by the dealer, was taken into consideration and discussed. Therefore, there is no merit in the averment put forth on behalf of the applicant in the application that "decision suffers from error because of ignoring the spirit of the affidavits filed/statements examined on oath by either party to the proceedings below."

33. In **Girdhari Lal Gupta v. D.H. Mehta and Anr.**, AIR 1971 SC 2162, cited by counsel for the applicant, Hon'ble Apex Court,

while disagreeing with the submission on behalf of the respondent that it was not a case fit for review because it was only a case of mistaken judgment, observed that at the time of arguments attention of the Hon'ble Judges was not drawn specifically to sub-section 23C(2) of FERA, 1947 and the light it throws on the interpretation of sub-section (1). Accordingly, Hon'ble Court partly allowed the review petition and modified the judgment, while setting aside 6 months' rigorous imprisonment, in view of the contention on behalf of the appellant that the appellant did not come within the purview of Section 23C(1) or Section 23C(2) of the Act.

The above said decision does not come to the aid of the applicant, as same is distinguishable on facts, and herein this Appellate Tribunal does not find that any provision of law was not taken note of or considered while deciding the appeal.

34. One of the grounds in the application is that the decision by this Appellate Tribunal shows that it is a case of partial consideration of the grounds argued by way of written submissions.

In this regard, reference may be made to the following specific observations made by this Appellate Tribunal in the judgment:

> "18. It may be mentioned here that even though learned counsel for the appellant has submitted written submissions in the course of final arguments, he has neither argued any point nor referred to any

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decision other than the point/decisions discussed above.

In view of the above observations, the ground raised on behalf of the applicant is false and baseless."

35. In Para No. 24 of the review application, applicant has referred to certain decisions, but at the time of arguments on the review application, none of the decisions mentioned in this para was referred to or relied upon or submitted for perusal.

36. Record reveals that counsel for the applicant availed of sufficient opportunities to argue the appeal and the Appellate Tribunal having discussed all the issues involved and recorded findings while delivering judgement. In case, applicant felt aggrieved on the ground that any wrong findings were recorded in the judgment, he had the remedy to challenge the decision before the Hon'ble High Court, instead of filing of review application.

37. It may be mentioned that in the review application, while seeking review, applicant has alleged that the submissions filed by either party i.e. either the assessee or the Revenue has since been considered in a narrow perspective by the Hon'ble Tribunal "without thoughtfully paying heed to what has since been argued."

Suffice it to state that the ground put forth may be a good ground for challenging the decision before the Hon'ble High Court, and not for seeking review, especially when detailed

reasons and findings were recorded by this Appellate Tribunal while deciding the appeal.

In this regard, it may be observed that this averment could have been happily worded, while showing due respect to the Court.

Result

38. In view of the above discussion, this review application deserves to be dismissed. Same is hereby dismissed.

39. Copy of the order be sent 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 : 16/03/2023

Narinder Kumar
16/3/2023

Narinder Kumar
Member (Judicial)