

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

Appeal No.228-233/ATVAT/2018

Date of Decision: 21/03/2023

M/s. Evogreen Trading (P) Ltd.,
1/5, W.H.S. Kirti Nagar,
New Delhi – 110015.

.....Appellant

v.

Commissioner of Trade & Taxes, Delhi.

..... Respondent

Counsel representing the Appellant : Sh. V. Lalwani with
Sh. Rohit Gautam.
Counsel representing the Revenue : Sh. C. M. Sharma.

JUDGMENT

1. These appeals were earlier disposed of by this Appellate Tribunal vide common judgment dated 28/03/2022, while observing in the manner as:

“Learned counsel for the appellant has submitted that when affidavit was filed on behalf of the dealer to explain delay in filing of the objections, Learned OHA was required to take into consideration the unchallenged affidavit and proceed to dispose of the objections on merits, instead of rejecting the same on the ground that same were barred by limitation. In this regard, learned counsel for the appellant has rightly placed reliance on decision in **Mehta Parikh and Co. v. Commissioner of Income Tax, Bombay**, AIR 1956 SC 554.

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When it is case of the dealer-appellant that assessments framed by the Assessing Authority were never served upon him, it was for the learned OHA to take into consideration all the averments/grounds raised in this regard in the objections and also the affidavit of the director of the dealer-objector.

As rightly pointed out by learned counsel for the appellant, Learned OHA has not given any reason which led him to the conclusion that the objections were filed beyond the prescribed period of limitation. Learned counsel for the Revenue has candidly admitted that while rejecting the objections on the ground that same were time-barred, Learned OHA has not given reasons.

We find that in the impugned order, Learned OHA neither discussed the affidavit of the deponent nor gave any reason for discarding the same.

For want of reasons, the orders passed by Learned OHA cannot be allowed to stand. In other words, the impugned orders deserve to be set aside for want of reasons.

When we expressed that the case needs to be remanded to Learned OHA for decision afresh, as the impugned order is without any reasons, learned counsel for the appellant submitted that the Appellate Tribunal should itself dispose of, without remanding the matter to Learned OHA, as the Appellate Tribunal is final Authority to adjudicate a fact. Learned counsel for the Revenue strongly opposed this submission on the ground that when no reasons were given by Learned OHA for rejecting the objections on the ground that same were time barred.



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We find merit in the contention raised by learned counsel for the Revenue. When the order passed by Learned OHA is without any reason, the matter is required to be remanded to the same, so that the point of limitation is decided by the said Authority giving reasons, after providing reasonable opportunity to the dealer-Objector of being heard. In case, Learned OHA arrives at the conclusion that the objections were filed within the prescribed period of limitation, then he would be required to proceed further and decide the other objections.

Consequently, these appeals are disposed of and while setting aside the impugned orders, the matters are remanded to Learned OHA to decide afresh the issue as to whether the objections filed by the dealer-objector were or were not barred by limitation, after providing to the dealer-objector reasonable opportunity of being heard, and in case the conclusion is that the objections were filed within the prescribed period of limitation, then to proceed further and decide the other objections in accordance with law.”

2. Dealer filed VAT Appeal No. 11/2022 before the Hon’ble High Court challenging judgment dated 28/03/2022, passed by this Appellate Tribunal.
3. Vide judgment dated 30/05/2022, while disposing of VAT Appeal No. 11/2022, Hon’ble High Court has remitted the matter to this Appellate Tribunal for a *de novo* hearing on merits, while observing in the manner as:

“3.1 The matter is remitted to the Tribunal for a *de novo* hearing on merits.

3.2 Needless to add, the fact that we have set aside the



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impugned orders will not come in the way of the parties advancing their respective stands before the Tribunal.”

4. The above captioned six appeals were filed by the dealer-appellant challenging orders dated 29/10/2018, passed by Learned Joint Commissioner, (here-in-after referred to as the Objection Hearing Authority - OHA).
5. Vide impugned orders, Learned OHA rejected the objections filed by the dealer-assessee-objector-appellant on the ground that objections were filed beyond the prescribed period.
6. As per case of the dealer-appellant, default assessments of the appellant company under the CST Act, pertaining to all the four quarters of the tax period 2011-12, were framed by the Assessing Authority, vide orders dated 26/3/2016, whereas assessments relating to all the four quarters for the tax period 2012-13, under the CST Act, were framed vide orders dated 24/3/2017.
7. Feeling dissatisfied with the assessments framed, dealer-assessee filed eight objections i.e. four objections in respect of assessment year 2011-12 and other four objections in respect of assessment year 2012-13.

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8. Learned SOHA disposed of objections pertaining to assessment relating to the 4th quarter of 2011-12 and 4th quarter of 2012-13 vide order dated 22/6/2018.
9. When remaining six objections were taken up for hearing, a preliminary objection was raised by Id. OHA, regarding maintainability of the above objections, same having been filed on 13/5/2018.
10. Before learned OHA, on behalf of the dealer, it was averred that the impugned notices of default assessment were never served on the assessee-objector company; and that the assessee company came to know of the assessments only on 7/5/2018; that the dealer-objector company obtained the certified copies of the above notices of default assessment and then filed the objections on 13/5/2018.
11. As per record, Learned OHA adjourned the objections to 10/10/2018 and called for report regarding service of notices, from the system branch.
12. Objector company is stated to have filed an affidavit of one of its directors.

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13. Since the objections were not being disposed of, on 15/10/2018, the Objector company is also stated to have served a notice u/s 74(8) of the DVAT Act, in form DVAT-41, requesting Learned OHA to decide the above objections within 15 days from the date of notice.
14. Ld. OHA rejected the objections on the ground that the objections were filed beyond the prescribed period of limitation.
15. Arguments heard. File perused.

Discussion

16. Counsel for appellant has contended that while rejecting objections filed by the dealer, Objection Hearing Authority has given reasons. As further submitted that OHA should have held that objections were filed within the prescribed period of limitation, as the dealer had filed affidavit to the effect that assessments framed by the Assessing Authority on 26.03.2016 and 24.03.2017 in respect of tax period 2011-12 & 2012-13 respectively, were never received and that the dealer had to apply for certified copies thereof. Counsel for appellant further submitted that certified copies having been received on 07.05.2018, objections presented on 13.05.2018 were within the prescribed period of limitation.
17. It may be mentioned here that earlier when the appeals were argued before this Appellant Tribunal on 25.03.2022, the



contention raised by the counsel for the appellant was contrary to the one put forth today. Earlier, counsel for appellant had pointed out that OHA had not given any reason for arriving at the conclusion that the objections were filed beyond the prescribed period of limitation. At that time, counsel for Revenue had candidly admitted said submission, and accordingly, the matter was remanded to learned OHA.

18. Since earlier decision by this Appellant Tribunal given on 28.03.2022 stands set aside and arguments have been advanced afresh *de-novo*.

The point before this Appellant Tribunal for consideration is, "as to whether learned OHA was justified in rejecting the objections while observing that same were barred by limitations?"

19. Learned counsel for the Revenue has contended that for the reasons recorded by learned OHA, the objections were rightly held to be barred by limitation.
20. While dealing with the point of limitation in the impugned order, learned OHA observed as under:

"I have heard the arguments of the Counsel of objector and perused the various orders passed by VAT Tribunal and High Court of Delhi as stated by the counsel of the dealer. It is a fact that he dealer has been filing his return regularly and as per system, the dealer had filed returns upto 1st Qtr 2017-18 and hence, it is hard to believe that the dealer would not have seen the notice of



default assessment passed by the Assessing Authority. Moreover, the Counsel is reluctant to get the dealer login in front of OHA by way of calling the dealer to do so to verify the genuinity of affidavit filed by the Objector with regard to receipt of assessment orders and filing of objections timely. For this purpose, the report was sought from system branch also and case was fixed for 30.11.2018 but in the meantime the objector has filed Form DVAT 41 for deciding his case as per Section 74(7) of DVAT Act, 2004. It seems the dealer was aware of the default assessment order but did not take any steps to get his case addressed by filing objections in a time bound manner as per DVAT Act, 2004. The dealer is also not ready to furnish details of C-Forms in support of his claim of Inter-State sales at Concessional rates. Further perusal of data as available on the Department's website, it is found that the dealer had appeared before the Special Objection Hearing Authority for re-assessment of his case for the year 2011-12 & 2012-13. The dealer was short of some C-forms and accordingly the SOHA had raised demands in r/o missing C-forms and revised the original assessment order for 4th Qtr of 2011-12 & 2012-13 respectively. Here, it is pointed out that it is the duty of the dealer to furnish C-forms in a time bound manner and should deposit due tax in r/o missing C-forms (C-forms which the dealer was unable to procure from the purchasing dealer). In the instant case, the dealer has failed to deposit the due tax in r/o missing C-forms. It seems the dealer has failed to comply the CST Act in depositing due tax rather the dealer is now seeking relief under section 34 of DVAT Act, 2004 stating that the assessment is barred by time. Hence, in the light of above facts, submissions, I am of the considered view that the present objection filed by the dealer is barred by time and hence rejected without going into the merits of the case."

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21. As noticed above, impugned assessments were framed on 26/03/2016 and 24/03/2017, in respect of tax period 2011-12 and 2012-13 respectively.

As per section 74 of DVAT Act, a person aggrieved by the assessment framed by Assessing Authority may file objections before Objection Hearing Authority within 2 months of the date of service of the assessments.

22. Herein, when the director of the company had filed his affidavit before learned OHA to the effect that copies of the default assessment were never served upon the dealer company, it was for the Revenue to cross examine the said director on the said affidavit, but no such step was taken by the Revenue, before learned OHA.

In the alternative, Revenue could place before learned OHA proof in respect of due service of the default assessments upon the dealer, but no evidence was led by the Revenue before learned OHA as against the affidavit of the director.

As finds mentioned in the impugned order, objections were adjourned by learned OHA on 10/10/2018 requesting the System Branch to furnish a report regarding the service of notice of default assessments. There is nothing in the impugned order that the System Branch submitted any report to learned OHA on 10/10/2018.

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23. As further stands recorded in the impugned order, on 15/10/2018, dealer filed Form DVAT 41 calling upon OHA for decision in objections within the stipulated period of 15 days.

Filing of DVAT 41 is not in dispute. Therefore, learned OHA was required to dispose of the objections within 15 days from the filing of DVAT 41.

24. Since the matter stood already adjourned from 10/10/2018 to 31/11/2018, as recorded in the impugned order, in view of DVAT 41 submitted on behalf of the dealer, learned OHA should have preponed the matter to an early date, to have report from the System Branch, in terms of previous orders. However, learned OHA, even after having being served with DVAT 41, preponed the matter to 29/10/2018 i.e. on the 14th day from the date of service of the said notice.

Even if the matter was preponed to 29/10/2018, learned OHA should have collected report from System Branch regarding service of default assessments upon the dealer, but, no such step was taken. Rather, learned OHA requested counsel for the dealer to open the login of the dealer to find out if the default assessments were served or not served upon the dealer by the Department.

As is available from the impugned order, counsel for the dealer expressed his inability to call the dealer to open his



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login on that day. There is nothing in the impugned order to suggest that counsel for the dealer had requested learned OHA for adjournment to call the dealer on some other day, so that the login could be opened, to verify the above said claim regarding non-service. Had counsel for the dealer sought adjournment, learned OHA may have been justified in postponing the matter to the next date i.e. to the 15th day from the date of service of DVAT 41 or even to any subsequent date. However, as already mentioned, the impugned order does not reveal if counsel for the appellant sought adjournment to call the dealer to open the login on some other day.

25. Even otherwise, in the given situation on 29/10/2018, it would have been convenient for Revenue to collect and submit report from the System Branch, regarding service or non-service of the default assessments upon the dealer. However, no such step was taken by the Revenue or by learned OHA.
26. As a result, I find that the claim of the dealer regarding non-service of the default assessments, as testified by one of its director, remained unchallenged, for want of cross examination of the said director and also for want of any evidence from the side of the Revenue, to the contrary, having regard to the process of adversarial system.

When learned OHA referred to the other proceedings which the dealer was pursuing during those days, it can safely



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be said that the observations by learned OHA that the dealer appeared to be aware of the default assessments, are not based on cogent reasons or material, so as to hold that the objections were filed beyond the prescribed period of limitation.

27. In view of the above discussion, I find that the impugned order passed by learned OHA rejecting the objections filed by the dealer on the ground that the same were barred by limitation, deserves to be set aside. I order accordingly.
28. It may be mentioned that in the course of arguments, learned counsel for the appellant submitted that in case the objections are held by this Appellate Tribunal to have been filed within the prescribed of limitation, he shall have no objection to the remand of the matter to learned OHA for deciding the objections on merits i.e. on all grounds, except on the ground that the objections were barred by limitation. By making this submission, learned counsel for the dealer has consented for remand of the matter to learned OHA for decision on the grounds, other than the ground of the objections being barred by limitation.

Even, learned counsel for the Revenue has no objection to the remand of the matter to learned OHA for decision on all the grounds other than the ground of objections being barred by limitation.

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Result

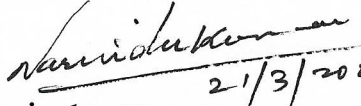
29. Consequently, these appeals are disposed of and while setting aside the impugned order dated 29/10/2018 passed by learned OHA, matter is remanded to learned OHA for decision afresh on all the grounds, other than the ground that the objections were barred by limitation.

Of course, learned OHA shall provide reasonable opportunity of being heard to the dealer – objector for the purpose of decision of the objections in view of the above findings.

Dealer to appear before learned OHA on 10/04/2023.

30. File be consigned to 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: 21/03/2023


21/3/2023
Narinder Kumar
Member (J)

