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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 12th July, 2023

+ **VAT APPEAL 11/2023**

M/S CHITRA HARDWARE

..... Appellant

Through: Mr. Vasdev Lalwari and Mr.
Rohit Gautam, Advs.

versus

COMMISSIONER OF VAT & ANR.

..... Respondents

Through: Mr. Rajeev Aggarwal, ASC
with Ms. Vidisha Swarup, Adv.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

CM APPL. 34455/2023 *(condonation of delay of 38 days in filing the present appeal against the impugned order dated 31.03.2023)*

1. For the reasons stated in the application, the same is allowed and the delay in filing the present appeal is condoned.

2. The application stands disposed of.

CM APPL. 34457/2023 *(exemption from filing the original / certified copies / true typed copies of annexures as the same are either dim copies or typed in single space or hand written)*

3. Exemption allowed, subject to all just exceptions.

4. The application stands disposed of.

VAT APPEAL 11/2023 & CM APPL. 34456/2023 *(stay of recovery proceedings)*



5. The appellant has filed the present appeal impugning the order dated 31.03.2023 (hereafter '**impugned order**') passed by the Appellate Tribunal for Delhi Value Added Tax (hereafter, **the Tribunal**) dismissing the appellant's appeal against an order dated 28.11.2022 passed by the Objection Hearing Authority (hereafter '**OHA**'). In terms of the said order, the OHA had rejected the appellant's objection under Section 74 of the Delhi Value Added Tax Act, 2004 (hereafter '**DVAT Act**') against the default assessment of tax framed by the Assessing Authority, under Section 32 of the DVAT Act, for the financial year 2013-14.

6. The Assessing Authority rejected the appellant's claim for refund, which arose in respect of its input tax credit (hereafter '**ITC**'), on the ground that the appellant had failed to establish the genuineness of the ITC on the basis of any documentary evidence.

7. The Assessing Authority had also recorded that the notice, under Section 59(2) of the DVAT Act, dated 16.01.2018, was issued to the appellant for the production of its records including the purchase invoices, bank statements etc. but the appellant had failed to produce the same. Thus, essentially, the default assessment was framed for want of the appellant producing the necessary evidence and material to establish the payment of ITC. As noted above, the appellant's claim for refund is based on the ITC.

8. The OHA dismissed the appellant's objections on the same ground – failure on the part of the appellant to produce the relevant material necessary to establish the payment of ITC. Paragraphs 7 and 8 of the order passed by the OHA read as under:



"7. I have perused the records available/made available and also the oral arguments made by the Ld. Counsel. As far as claim of ITC is concerned, it is observed that verification of the purchase and ITC/refund is a question of fact and can be best examined by way of documentary evidences such as tax invoices, DVAT-30 & 31, bank records etc. It is also observed that unless and until bonafide of purchase transactions are under doubt, the dealer deserves the benefit of ITC and incase the bonafides of purchases are doubtful, it would be necessary to go into other details of transactions to verify the bonafide of purchases. In the instant case, the Counsel for the Objector Dealer despite being accorded due opportunities of being heard on various occasions has failed to justify his claim by failing to provide the necessary documentary evidences.

8. In view of the above facts, it is undisputed that objector has failed to produce relevant records such as DVAT-30-31, bank statements, proof of movement of goods etc. before the Assessing Authority during the present proceedings and therefore, I have no option but to hold that impugned assessment notice has been issued correctly in accordance with law."

9. There is no dispute that the appellant had not placed any invoice, bank statement or other material to establish the payment of ITC before the OHA.

10. Aggrieved by the OHA's order dated 28.11.2022, the appellant preferred the appeal (Appeal No. 460/ATVAT/2022) before the learned Tribunal. The learned Tribunal has also rejected the appellant's appeal for the same reason.

11. It is apparent from the orders passed by the Assessing Authority, the learned OHA, and the learned Tribunal that the assessee's challenge to the default assessment was rejected as the appellant had failed to produce any material to establish payment of ITC. This is clearly a question of fact and therefore not amenable to review in these proceedings. It is also material to mention that there is



no dispute that the appellant had not produced relevant material before the Assessing Authority or the learned OHA or the learned Tribunal.

12. Learned counsel for the appellant submits that the appellant was not required to produce any such material as the ITC could be verified from the returns and the forms filed online including the returns filed by the dealers from whom the appellant had purchased goods.

13. The said contention is unsubstantial.

14. The Assessing Authority is duly empowered to call for the records and to verify the ITC as claimed. The onus to establish the genuineness of the ITC rests with the assessee.

15. The learned counsel further submits that the order passed by the Assessing Authority is *mala fide* as it was passed on the last date prior to the bar of limitation. He submits that there are a number of decisions rendered by this Court that deprecate this practice.

16. He submits that the default assessment was framed only to obstruct the appellant's claim for refund. In addition, he submits that the order passed by the Assessing Authority has not been signed and therefore, is *non est*.

17. Mr. Rajeev Aggarwal, learned counsel who appears for Revenue on advance notice, points out that none of the above two grounds had been urged by the appellant before the learned OHA or the Tribunal. He contends that the same are sought to be raised for the first time in this Court.

18. He also submits that the appellant had produced certain invoices along with its Review Petition, before the Tribunal seeking review of the impugned order, which was dismissed. However, that order is not



the subject matter of challenge before this Court.

19. It would not be open for the appellant now to raise any new challenge to the order passed by the Assessing Authority including on the ground that it had not been signed. This question does not arise from the impugned order passed by the Tribunal. The appellant has all along proceeded on the basis that the said order was passed by the Assessing Authority and had assailed the same on merits, which was considered by the OHA and by the learned Tribunal.

20. We are also not impressed by the argument that the order passed by the Assessing Authority is required to be set aside on the grounds of *mala fide*.

21. It is well-settled that in case *mala fides* are alleged, the same has to be specifically pleaded with full particulars. The scope of the appeal, in the present case, is limited to examining the substantial questions of law that arise in the matter.

22. In view of the above, none of the three contentions, as advanced by the learned counsel for the appellant, are merited. We find no grounds to entertain the present appeal.

23. The appeal is, accordingly, dismissed.

24. The pending application is also disposed of.

VIBHU BAKHRU, J

AMIT MAHAJAN, J

JULY 12, 2023

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