M.RAMACHANDRA MURTHY
CHARTERED ACCOUNTANT

Flat No.303, ASHOKA SCINTILLA
H.No.3-6-520, Opp. To Malabar,
Himayathnagar Main Road,
Hyderabad -500 029
Tel: 040-40[illegible]78935 / 36

To,
The Appellate Dy. Commissioner (CT)
Punjagutta Division,
Hyderabad.

Sir,

Sub:- Filing the appeal in the case of M/s. **Nilgiri Estates, Hyderabad.**
- For the Period – 2015-2016/CST – reg.

*****

Please find enclosed herewith the following appeal papers:

1. Form - APP 400 — 2 copies.
2. Grounds of Appeal — 2 copies.
3. Challan no.6101142020 dt.12/7/2021 for Rs.1000/- towards appeal fees.
4. Final assessment order no.52683 dt.31/3//2020 passed by Deputy Commercial Tax Officer M.G.Road – S.D.Road Circle Begumpet Division, Hyderabad, Original along with Xerox copy.
5. Copy of the proof of payment of 12.5% Disputed.
6. Form APP 400A
7. Form APP 406 — 2 copies.

Thanking you
Yours sincerely

For Yours sincerely

M.Ramachandra Murthy
Chartered Accountant

Office of the Appellate Dy. Commissioner (CT)
20 JUL 2021
Punjagutta Divn.

FORM APP 400

FORM OF APPEAL UNDER SECTION 31

[See Rule 38(2)(a)]

1.	Appeal Office Address	: The Appellate Dy. Commissioner (CT) Punjagutta Division, Hyderabad
2.	TIN/GRN	: 36607622962
3.	Name & Address	: M/s. Nilgiri Estates, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad
4.	I wish to appeal the following decision / assessment received from the tax office on	: 17/06/2021
5.	Date of filing of appeal	:05/07/2021
6.	Reasons for delay (if applicable enclose a separate sheet	: Not Applicable
7.	Tax Period / Tax Periods	: 2015-16/CST
8.	Tax Office decision / assessment Order No.	: Final assessment order no.52683 dt.31/03/2020 passed by Deputy Commercial Tax Officer, M.G. Road – S.D. Road Circle, Begumpet Division, Hyderabad.
9.	Grounds of the appeal (use separate sheet if space is insufficient	: Separately Enclosed
10.	If turnover is disputed	
	a) Disputed turnover	: Rs.10,59,396 @ 14.5%
	b) Tax on the disputed turnover	: Rs.1,53,612/-
	If rate of tax is disputed	
	a) Turnover involved	: NIL
	b) Amount of tax disputed	: NIL
11.	12.5% of the above disputed Tax paid	: Rs.19,202/-

Note: Any other relief claimed : Other grounds that may be urged at the time of hearing.

NILGIRI ESTATES
SEC'BAD

(The payment particulars are to be enclosed if ready paid along with the reasons on Form APP 400A)

12. Payment Details:

a)Challan / Instrument No.	:	
b)Date	:	
c)Bank / Treasury	:	------
d)Branch Code	:	------
e)Amount	:	

TOTAL	:	

Declaration:

I, **<u>SOHAM MODI</u>** hereby declare that the information provided on this form to the best of my knowledge is true and accurate.

*

NILGIRI ESTATES ★ SEC'BAD

Signature of the Appellant & Stamp   Date of declaration

Name :
Designation :

Please Note: A false declaration is an offence.

******

FORM APP 406

APPLICATION FOR STAY OF COLLECTION OF DISPUTED TAX

[Under Section 31(2) & 33(6)] [See Rule 39(1)]

01. Appeal Office Address:

To,
The Appellate Deputy Commissioner (CT)
Punjagutta Division,
Hyderabad

Date	Month	Year
09	07	2021

02	TIN	36607622962

03. Name : M/s. Nilgiri Estates,
Address : 5-4-187/3 and 4,Soham Mansion,
M.G. Road, Secunderabad

04.	Tax period	2015-16/CST
05.	Authority passing the order or proceeding disputed.	Final assessment order no.52683 dt.31/03/2020 passed by Deputy Commercial Tax Officer, M.G. Road – S.D. Road Circle, Begumpet Division, Hyderabad
06	Date on which the order or proceeding was Communicated.	17/06/2021
07.	(1) (a) Tax assessed	Rs.1,53,612/-
	(b) Tax disputed	Rs.1,53,612/-
	(2) ~~Penalty~~ / Interest disputed	NIL
08	Amount for which stay is being sought	Rs.1,53,612/-
09.	Address to which the communications may be sent to the applicant.	M/s. Nilgiri Estates, 5-4-187/3 and 4, Soham Mansion, M.G. Road, Secunderabad

NILGIRI ESTATES ★ SEC'BAD ★

Signature of the Dealer(s)

Signature of the Authorised Representatives if any

10. GROUNDS OF STAY

1.) Substantial question of facts and law that may arise in the appeal.

2.) The appellant will be hard hit if it is called upon to pay this heavy amount of tax pending disposal of the appeal.

3.) The grounds that are stated in the main appeal may kindly be read as grounds of this appeal.

4.) The appellant has already paid 12.5% of disputed tax for the purpose of admission of the appeal and hence it is requested grant stay on the balance disputed tax till the disposal of the appeal.

5.) In this regard the appellant relied on the latest decision of the Hon'ble Supreme Court in a case wherein the Hon'ble Court dismissed the SLP filed against the order of the Hon'ble High Court of Andhra Pradesh & Telangana in the case of Deputy Commercial Tax Officer-I, Bhavanipuram Circle, Vijayawada Vs. Sri Dedeepriya Paints in Diary No.11711 of 2019 dt.22/04/2019.

The Honourable High Court of Andhra Pradesh & Telangana in its decision in WP No.20922 of 2018 dated 22.06.2018 in the case of Sri Dedeepriya Paints Vs Deputy Commercial Tax Officer-I, Bhavanipuram Circle, Vijayawada held as follows:-

"When the petitioner concern already paid 12.5% of the disputed tax amount for the purpose of maintaining an appeal as required by law, it would be wholly unjust for the tax authorities to demand the balance of the disputed tax amount notwithstanding the pendency of the appeal".

6.) The appellant relied on the latest decision of the Honourable High Court of Telangana in the case of M/s. Capart Industries, Hyderabad in WP Nos.3954,3976,4089,4115,4518,4556 and 4577 of 2020, wherein it is held as follows:-

" 4. Counsel for the petitioner relies upon the order of the Division Bench of this court in Sri Dedeepriya Pains Vs. Deputy Commercial Tax Officer – I wherein a similar action on the part of the Department in proposing to collect the balance disputed tax through 12.5% of the disputed tax amount was already deposited with the Department pending appeal before the Appellate Deputy Commissioner fell for consideration. In that case, this court held that once the assesse had already paid 12.5% of the disputed tax amount for the purpose of maintaining an appeal as required by law, it would be wholly unjust for the tax authorities to demand the balance of the disputed tax amount notwithstanding the pendency of appeal.

5. This above order was later confirmed by the Supreme Court in SLP (CIVIL)Diary No.11711 of 2019 on 22.04.2019.

6. The special Government Pleader for Commercial Taxes appearing for respondents does not dispute **<u>the principle laid down</u>** in these cases.

7. Since the petitioner had already paid 12.5% or more of the disputed tax pending appeals before the Appellate Deputy Commissioner and the Telangana VAT Appellate Tribunal, we are of the considered opinion that the respondents are not justified in refusing to grant the petitioner stay of collection of the balance disputed tax and issuing Garnishee orders to the Petitioner's banker for recover of the balance disputed tax".

Copy of the High Court order mentioned above is attached herewith

Hence it is just and necessary that the Appellate Dy. Commissioner (CT) may be pleased to grant stay of collection of the disputed tax of Rs.1,53,612/- pending disposal of the appeal.

VERIFICATION

I, **SOHAM MODI** Signatory applicant (s) do hereby declare that what is stated above is true to the best of my / our knowledge and belief.

Verified today the 9th day of July'2021

NILGIRI ESTATES SEC'BAD

Signature of the Dealer(s)

Signature of the Authorised Representatives if any

M/S. NILAGIRI ESTATES
HYDERABAD.

2015-16/CST

STATEMENT OF FACTS:

1. The appellant is a registered VAT dealer on the rolls of the Commercial Tax Officer, M.G.Road – S.D.Road Circle, Begumpet Division, Hyderabad and is engaged in the business of constructing and selling apartments, villas etc.

2. The appellant has regularly filed its VAT and CST returns and paid tax under the VAT Act on the corresponding turnovers. The appellant do not have any turnover under the CST Act as the appellant is in the business of constructing and selling apartments, villas etc. However for use in the construction of apartments/villas, the appellant purchased goods from outside the States and for this purpose of getting the goods in to the State, used advance way bills.

3. The Deputy Commercial Tax Officer, M.G.Road – S.D.Road Circle (herein after referred to as DCTO) has passed the assessment order for the year 2015-16 under the CST Act by determining Gross and Net Turnovers as Rs.10,59,396/- and levied tax of Rs.1,53,612/- vide his Final Assessment order dated 31.03.2020.

4. Aggrieved by the Assessment order the appellant prefers the present appeal on the following grounds amongst others that may be urged at the time of hearing of the appeal.

NILGIRI ESTATES ★ SEC'BAD ★

GROUNDS OF APPEAL:

1. At the outset the appellant submits that the impugned assessment order is highly illegal, arbitrary, without jurisdiction and against the facts and hence the assessment order is liable to be set aside.

2. It is submitted that the DCTO is not assessing authority under the CST Act for the appellant and CTO, M.G.Road – S.D.Road Circle is only the assessing authority for the appellant as per the provisions of the CST Act and Rules and hence the impugned order is passed without jurisdiction and hence it is liable to be set asdie.

3. The appellant next submits that the learned DCTO claimed that show cause notice is issued to the appellant through email and since the appellant is not responded the impugned order is passed. In this regard it is submitted that as per Rule 64 of TVAT Rules the show cause notice is not served and the appellant is not aware of the issue of show cause notice.

4. The appellant submits that the learned DCTO concluded the final assessment proceedings and issued the impugned order dated 31.3.2020 by claiming that the appellant has not availed the opportunity for filing objections. It is submitted that the appellant is not aware of any notice issued under the CST Act. Even the Final assessment order signed copy is also not provided to the appellant till the appellant made a specific request in this regard. The appellant submits that the impugned order is passed against the principles of natural justice and hence it is liable to set aside.

NILGIRI ESTATES * SEC'BAD *

5. The appellant also submits that they are in the business of constructing and selling apartments, Villas and the gross turnover determined in the assessment order is nothing but their inter State purchase of goods which are used in the construction of apartment/villas. The appellant submits they are liable to pay tax only on their sales but not on their inter State purchases. As the assessing authority wrongly adopted the way bill utilization of inter state purchase as taxable turnover, the same is liable is to set aside.

6. The appellant submits that as the impugned order is passed without verifying the books of account and by wrongly adopting the inter State purchases value as inter State sales, the same is liable to be set aside as illegal.

In view of the above grounds and the other grounds the appellant prays the Honourable Appellate Deputy Commissioner to set aside the impugned order and allow the appeal.

NILGIRI ESTATES ★ SEC'BAD ★

(APPELLANT)

GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT
Proceeding of Deputy Commercial Tax Officer
Name : G VIJAYA LAKSHMI
M.G.ROAD-S.D.ROAD Circle
BEGUMPET Division

MODI PROPERTIES PVT. LTD. SEC'BAD INWARD No. 25 Date 17/12 Sign.

A.O.NO.52683
ASMT :CST/36607622962/15-16

Date: 31-03-2020

Name : NILGIRI ESTATES
TIN : 36607622962
Address : , 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, NULL, Ranga Reddy, 36, 500003
E-mail : jayaprakash@modiproperties.com
Mobile : 9502288200

FINAL ASSESSMENT ORDER

M/s NILGIRI ESTATES were informed that they have scored the following turnovers under the CST Act as per office records i.e., CST VI returns / VAT 200 returns / CST way bills / TINXSYS records for the period April 2015-March 2016, the highest of which was taken as assessable turnover in the SCN (as arrived in the annexure to SCN).

Interstate sales	Rs. 964836
Consignment sales	Rs. 94560

They claimed exemption on the following in the monthly returns.

Consignment sales	Rs. 94560

The above deductions & exemptions were not supported by any documentary evidence and hence the exemptions claimed in the monthly returns were proposed to be disallowed on these turnovers subject to filing of such evidence by the assessee.

Accordingly a Show Cause notice was issued to the assesse. But they have not filed objections and also have not availed personal hearing. They were issued a final notice on dt 06-03-2020. However the dealer has not responded to these/ this notice also. Therefore in view of the limitation prescribed for assessment in sub-rule 5A of rule 14-A of the CST(Telangana) Rules, the proposals in the pre assessment show cause notice are confirmed as follows :

Gross turnover	Rs. 1059396
Exempt turnover	Rs. 0
Net turnover	Rs. 1059396
Tax on net turnover @ 14.5%	Rs. 153612
Tax paid by adjustment against VAT ITC	Rs. 0
Tax paid	Rs. 0
Balance	Rs. 153612.42

Accordingly a demand notice in Form CST VIII is issued. The Dealer may file appeal with ADC within (30) days of this order.

G. Vijaya Lakshmi
Deputy Commercial Tax Officer

D.No.6-3-789, 4th Floor, Pavani Prestige Complex, Above R.S. Brothers, Ameerpet, Hyderabad, Telangana - 500 016.

2015-16/05

17/12/2021

GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT
Form CST VIII
Notice of final annual assessment and demand
[See rule 14-A (7)]

A.O.NO.52683

Assessment No.CST/36607622962/15-16

Registration No.36607622962

To

Name : NILGIRI ESTATES
TIN : 36607622962
Address : , 5-4-187/3 AND 4, SOHAM MANSION, MG ROAD, SECUNDERABAD, NULL, Ranga Reddy, 36, 500003

Take notice that you have been finally assessed under the Central Sales Tax Act, 1956 to a tax of Rs 153612.42 only for the year ending the 31st March 2016 the period upto and inclusive of the date of discontinuance of business and that after deducting the total amount of monthly payment(s) already made by you towards the tax for that year, you have to pay a further sum of Rs 153612.42 only. This balance of the tax shall be paid within twenty one days from the date of service of this notice by money order to the undersigned or by crossed cheque in favour of the undersigned or to the Deputy Commercial Tax Officer / Assistant Commercial Tax Officer or to the Bill Collector failing which the amount will be recovered as if it were an arrear of land revenue and you will be liable to fine as provided in Rule 16 of the Central Sales Tax (Telangana) Rules, 1957.

Nature of goods	Rate of tax	Turnover
1	2	3
	14.50 %	1059396

Place : Hyderabad

Date :31-03-2020

G. Vijaya Lakshmi
Deputy Commercial Tax Officer
BEGUMPET
M.G.ROAD-S.D.ROAD