

PROCEEDINGS OF THE APPELLATE DEPUTY COMMISSIONER(CT),
PUNJAGUTTA DIVISION, HYDERABAD

PRESENT SMT. Y. SUNITHA,

ADC Order No.51

Appeal No.BVC/40/2021-22

Date of hearing: 10-12-2021

Date of order : 21-01-2022

1. Name and address of the Appellant. : M/s Nilgiri Estates, Hyderabad.
2. Name & designation of the Assessing Authority. : Deputy Commercial Tax Officer, M.G.Road-S.D.Road Circle, Hyd.
3. No., Year & Date of order : TIN No.36607622962, dt.31-03-2020, (2015-16 / CST)
4. Date of service of order : 17-06-2021
5. Date of filing of appeal : 09-07-2021
6. Turnover determined by The Assessing Authority : -
7. If turnover is disputed:
 - (a) Disputed turnover : ₹10,59,396/-
 - (b) Tax on disputed turnover : ₹ 1,53,612/-
8. If rate of tax disputed:
 - (a) Turnover involved : -
 - (b) Amount of tax disputed : -
9. Amount of relief claimed : ₹1,53,612/-
10. Amount of relief granted : REMANDED
11. Represented by : Sri M. Ramachandra Murthy, Chartered Accountant

NOTE: An appeal against this order lies before the Telangana VAT Appellate Tribunal, Hyderabad within (60) days from the date of receipt of this order:

ORDER

M/s Nilgiri Estates, Hyderabad, the appellant herein, is a registered dealer under the TVAT & CST Acts bearing TIN 36607622962 and an assessee on the rolls of the Commercial Tax Officer, M.G.Road-

S.D.Road Circle, Hyderabad (hereinafter referred to as the territorial Assessing Authority). The present appeal is filed against the assessment orders dated 31-03-2020 (A.O.No.52683) passed by the Deputy Commercial Tax Officer, M.G.Road-S.D.Road Circle, Hyderabad (hereinafter referred to as the Audit Officer) for the tax periods falling under the year 2015-16 under the CST Act, disputing the tax liability on a turnover of ₹10,59,396/- (tax effect - ₹1,53,612/-).

The statement of facts and grounds of appeal filed by the appellant are extracted hereunder:

“Statement of facts:

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.

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.

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.

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.

Grounds of appeal:

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.

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 aside.

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.

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.

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.

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."

Sri M. Ramachandra Murthy, Chartered Accountant and Authorised Representative of the appellant appeared and argued the case reiterating the contentions as set-forth in the grounds of appeal and pleaded for setting-aside of the impugned order.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. In the

impugned orders, the Audit Officer determined the gross and net turnovers of the appellant at ₹10,59,396/- and subjected the same to tax the same at 14.5% towards inter-State sales on the ground that the appellant had not responded to the notices issued.

The claim of the appellant is that the Audit Officer is not justified in bringing the disputed turnover herein for the purpose of assessment and to levy tax thereon as the same do not relate to any inter-State sales or stock transfers or any other sales which falls under the CST Act for the purpose of assessment and to levy tax thereon. It is explained that they have issued CST way bills for the purpose of procuring the goods from other States and used such goods in the execution of works contract i.e., construction and selling apartments / villas and they have neither effected any inter-State sales nor transferred any goods to outside the State by issuing invoices against the CST way bills generated basing on which the impugned levy was made on the disputed turnover and as such construing the same as inter-State sale or stock transfers is incorrect. It is further stated that since the appellant is doing business in works contract i.e., construction and selling apartments / villas, the question of there being any inter-State sales of the same does not arise. It is also stated that it is not only a settled law that no estimation can be made basing on the utilization of way bills, but also it is a settled law that a sale cannot be assumed but is to be established. It is stated that in the appellant's case, the Audit Officer failed to establish that there is a sale, be it in the course of inter-State or commerce from one State to another. It is further stated that due to COVID-19 pandemic situation and the consequential lock down imposed not only in the State of Telangana as well as in the entire country when the impugned order was passed and also as no notice was properly served on the appellant and as such the appellant prevented from bringing the above facts before the Audit Officer.

Here, it is to be observed that if the appellant had utilized the way bills basing on which the disputed turnover herein was brought to tax under the CST Act for the purpose of assessment and to levy tax thereon, for the purpose of importing or purchasing goods from other States or procuring goods from outside the State branches on stock transfer basis, but not utilized the same for any transfer of goods to other States, then bringing the disputed turnover herein either for the purpose of assessment under the CST Act or to levy tax thereon towards inter-State sales cannot be sustained. However, since the Audit Officer has no occasion to consider this issue as the appellant appears to have not raised any such objections, which the appellant explained the reasons which prevented from filing the objections, I feel the issue involved herein warrants examination at the Assessing Authority's end.

For the reasons discussed above, I feel it just and proper to remit the matter back to the territorial Assessing Authority, who shall verify the claims of the appellant with reference to the books of account and other relevant documentary evidence that would be produced by the appellant and pass orders afresh in accordance with the provisions of law, after giving the appellant a reasonable opportunity to present their case. With this direction, the impugned order is set-aside on the disputed turnover of ₹10,59,396/- and the appeal thereon remanded.

In the end, the appeal is **REMANDED**.

Since the main appeal itself is disposed off, the stay petition filed becomes infructuous.


APPELLATE DEPUTY COMMISSIONER(CT),
UNJAGUTTA DIVISION, HYDERABAD.

To

The Appellants.

Copy to the Commercial Tax Officer, M.G.Road-S.D.Road Circle, Hyd.

Copy to the Dy.Commissioner(CT), Begumpet Division, Hyderabad.

Copy submitted to the Additional Commissioner(CT) Legal, and Joint Commissioner(CT), Legal, Hyderabad.

