



**GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT**

**CONSEQUENTIAL ORDERS PASSED BY ASSISTANT COMMISSIONER (ST),
M.G ROAD - S.D ROAD CIRCLE, BEGUMPET DIVISION**

Present: Smt. G.Vijaya Lakshmi

AO.No. 21595

TIN No. 36607622962/2015-16.

Dated: 09-12-2022.

Sub: CST Act 1956 – M/s. Nilgiri Estates - Assessment completed for the year 2015-16 - orders passed- Appeal preferred before ADC(CT) Panjagutta Division – Appeal remanded by the ADC – Notice issued for productions of books of account – sought extension of time - Show cause notice issued – Objections called for – Reply filed - Consequential orders passed - Regarding.

- Ref: 1. Order passed by the Dy. Commercial Tax Officer-2, M.G. Road - S.D. Road Circle AAO.No.52683, Dt:31.03.2020.
2. ADC (CT) Punjagutta Division Orders No.51, in Appeal No. BVC/40/2021-22, Dt: 21.01.2022.
3. Notice dated 19-07-2022 issued by the undersigned.
4. Letter dated 28-07-2022 filed by the dealer.
5. Letter dated 05-09-2022 filed by the dealer.
6. Show cause notice dated 17-11-2022 issued by the undersigned.
7. Letter dated 30-11-2022 filed by the dealer.
8. Notice for personal hearing dated 01-12-2022 issued by the undersigned.
9. Personal hearing opportunity availed by the dealer on dt. 08-12-2022.

M/s. Nilgiri Estates, Secunderabad are registered dealers on the rolls of Commercial Tax Officer, M.G. Road - S.D. Road circle, the assessment under CST Act.1956 for the year 2015-16 was completed vide 1st cited on the following turnover

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

Aggrieved by the orders the dealer preferred an appeal before the ADC (CT) Panjagutta disputing the above levy of tax. The ADC (CT) Panjagutta has remanded the appeal vide orders passed 2nd cited as under.

"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 Rs.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 Rs.10,59,396/- and the appeal thereon remanded.

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

In view of the ADC orders, vide 3rd cited a notice was issued to dealer requiring him to production of books of accounts so as to pass the consequential orders. However vide reference 4th and 5th cited, the dealer has sought extension of time upto 20-09-2022 for production of books of accounts. The extension of time was granted as requested by the dealer. However, till date the dealer has not provided any documentary evidence. Hence the undersigned has no other option except to issue show cause notice by proposing the demand as raised in the assessment order which detailed as under

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
Less: Tax paid at the time of appeal	Rs. 19202.00
(Vide Challan No. 508667, Dt:28.07.2021)	

Balance

Rs. 134410.42

Accordingly a show cause notice dated 12-11-22 was issued to the dealers calling their written objections if any against the proposed consequential order. In response to the show cause notice vide reference 5th cited the dealer has filed letter requesting to grant further extension of time. Accordingly the time was provided to the dealers. Thereafter as a last opportunity the undersigned has provided a personal hearing opportunity to the dealers to appear before her on dt. 08-12-2022 at 11.00 A.M. The authorised representative of the firm Mr. Jaya Prakash has appeared for personal hearing before the undersigned on dt. 08-12-2022 at 11.00 A.M. and submitted that during the assessment period they didn't affect any CST sales and the turnover on which CST tax levied was actually pertaining to advance waybill turnover. In support of their claim they have submitted copies of waybills and requested to drop the turnover and pass the consequential orders on NIL demand.

The request of the dealer is verified with the submitted documentary evidence i.e., waybills and noticed that through the waybills they have purchased the sanitary goods from various states and brought the same in to Telangana. Hence the turnover of Rs. 10,59,396/- proposed against CST Sales being pertain to purchases the same is hereby dropped. Accordingly the consequential orders for the period 2015-16 under CST Act, 1956 orders are hereby passed on NIL demand. However, since the dealer has paid the 12.5% amount on disputed tax for Rs.19,202/- vide Challan No.508667, Dt: 28.07.2021 the same is hereby treated as excess amount resultant to this consequential order.

**Assistant Commissioner (ST) (FAC),
M.G. Road - S.D. Road Circle,
Begumpet Division, Hyderabad**

To,
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