

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

PRESENT: SMT. Y. SUNITHA,

ADC Order No.2412

Appeal No.BV/86/2018-19

Date of hearing:11-09-2020

Date of order :28-12-2020

1. Name and address of the Appellant. : M/s Serene Constructions LLP, Hyderabad.
2. Name & designation of the Assessing Authority. : Deputy Commercial Tax Officer, Bowenpally Circle, Hyderabad.
3. No., Year & Date of order : TIN No.36570317033,dt.08-05-2018, (2015-17 / Tax)
4. Date of service of order : 23-05-2018
5. Date of filing of appeal : 18-06-2018
6. Turnover determined by The Assessing Authority : -
7. If turnover is disputed:
 - (a) Disputed turnover : -
 - (b) Tax on disputed turnover : -
8. If rate of tax disputed:
 - (a) Turnover involved : -
 - (b) Amount of tax disputed : -
9. Amount of relief claimed : ₹5,08,808/-
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 Serene Constructions LLP, Hyderabad, the appellant herein, is a registered dealer under the TVAT Act bearing TIN 36570317033 and

an assessee on the rolls of the Commercial Tax Officer, M.G.Road Circle, Hyderabad (hereinafter referred to as the territorial Assessing Authority). The present appeal is filed against the assessment orders dated 08-05-2018 (A.O.No.27156) passed by the Deputy Commercial Tax Officer, Bowenpally Circle, Hyderabad (hereinafter referred to as the Audit Officer) for the tax periods falling under the years 2015-16 to 2016-17 under the TVAT Act, disputing the levy of tax amounting to ₹5,08,808/-.

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

“The impugned order is highly illegal, arbitrary, unjustifiable and contrary to facts and law.

*Appellant submits that the appellant as developer entered into a Memorandum of Understanding (MoU) with Modi Farm House (Hyderabad) LLP (for short MFHLLP) on 31-05-2015 as vendor or owner of land for the construction of the cottage/villa on the farm land admeasuring about 1000 Sq. ft. as per the specifications of Annexure-C to the MOU. Coy of MoU is filed as **Annexure-1**. The appellant has declared a turnover of Rs. 7,20,000 and 2,88,000/- towards 5% turnover in Form VAT 200 returns filed by the appellant during the years 2015-16 and 2016-17 respectively.*

The appellant has also Joint Development Agreement cum General Power of Attorney dated 23-12-2016 with the owners of land to develop the housing project on the Scheduled project and agreement of sale with the owners of land dated 01-02-2017 for sale of the to the prospective purchasers. Xerox copies of the Joint Development agreement dated 23-12-2016 and agreement of sale of flats dated 01-02-2017 are filed as Annexures-3 and 4 respectively. From this tripartite agreement the appellant is the developer of the project and sellers of the villas/flats to the purchasers.

In pursuance of this MOU appellant has received advances of Rs. 7,20,000/- and Rs. 47,85,500/-including Rs. 7,20,00 of 2015-16 and Rs. 2,88,000 of 2016-17 from MFHLLP during the years 2015-16 and 2016-17 respectively and recorded the same in the P &L Account of the appellant for the said two years. In the notice the advance amount received during the year was proposed to be assessed under Section 4 (7) (a) of the VAT act after allowing standard deduction of 30% read with Rule 17 (h) of the Act and levying tax @14.5% on the balance amount as taxable turnover as the appellant not file Form VAT 250. Appellant has

completed only one villa and sold the same for Rs. 7,99,920/-vide invoice no. SCLLP/1/2015-16 dated 19-02-2016 including VAT of Rs. 36,000/-@ 5% to M/s Dr. Tejal Modi & Mr. Soham Modi, Jubilee Hills, Hyderabad as purchaser which is collected and paid along with returns.

Appellant submits that it is the subcontractor to the main contractor i.e. MFHLLP and intended to opt to pay tax under Section 4 (7) (b) of the Act by way of composition @5% on the total amount received or receivable towards the execution of works contract. In view of payment of tax under this sub-section appellant has charged VAT 5% only on the invoice and paid the same. Appellant has recorded all the purchases and paid tax @5% only on the invoice raised on the sale of villa as intended to pay tax under Section 4 (7) (b) only.

In the assessment order the assessing authority confirmed the proposal of levy of tax on the receipts as per P & L account for the years 2015-16 and 2016-17 after deducting 30% towards standard deduction under Section 4 (7) (a) read with Rule 17 (h) of the Act as the appellant could not file Form VAT 250 for levy of tax under Section 4 (7) (b). Appellant submits that it has maintained all books of account and the turnovers were extracted by the learned DCTO from the P & L account of the appellant. This proves that the appellant has maintained all books of account in which case the learned DCTO ought to have assessed the turnover under Section 4 (7) (a) of the Act by levying tax on the value of goods at the time of incorporation at the rates applicable to the goods under the Act by allowing eligible input tax credit to the extent of 75% of the tax paid on the goods purchased as per Rule 17 (1) (b). Appellant submits that the assessment order passed by the DCTO on standard method under Rule 17 (1) (g) is highly illegal and is therefore liable to be set aside.

In view of the above grounds and other grounds that may be urged at the time of hearing the appellant prays the Appellate Authority to set aside the assessment order as illegal and allow the appeal."

Sri M. Ramachandra Murthy, Chartered Accountant and Authorised Representative of the appellant 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 order. The appellant is doing works contract. The turnovers of the appellant were determined by the Audit Officer under Section 4(7)(a) of the TVAT Act read with

Rule 17(1)(g) of the TVAT Rules by allowing a standard deduction at 30% towards labour and services. Such determination of turnovers is assailed by the appellant mainly contending since they are maintaining books of account properly wherefrom the value of goods at the time of incorporation into the works and the value of labour and services are very much ascertainable, their taxable turnover is to be determined as per Rule 17(1)(e) of the TVAT Rules by allowing various deductions as prescribed thereat besides allowing input tax credit at 75%, but as per Section 17(1)(g) of the said Rules.

Here, it is necessary to take note of the provisions contained under Section 4(7)(a) of the TVAT Act governing the levy of tax on the works contracts, which reads as under:

“(a) Every dealer executing works contract shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act.

Provided that where accounts are not maintained to determine the correct value of goods at the time of incorporation, such dealer shall pay tax at the rate of 14.5% on the total consideration received or receivable subject to such deductions as may be prescribed.”

As per the above provisions, clause (a) of Section 4(7) prescribes that a dealer executing works contract has to pay tax on the value of goods at the time of incorporation into the works at the rates applicable to such goods under the Act and in such case the said dealer is eligible for deductions as prescribed under the relevant Rules, besides eligible for input tax credit at / 75%. However, the proviso appended to the above clause prescribes that where a dealer did not maintain the accounts so as to ascertain the value of goods at the time of incorporation into the works, such dealer has to pay tax at the rate of 14.5% on the total consideration received or receivable subject to such deductions as may be prescribed. Such prescription is made under Rule 17(1)(g) of the TVAT Rules which

provides for deduction at different percentages relatable to the nature of contracts executed.

In the case on hand, the claim of the appellant is that since they are maintaining the accounts wherefrom the value of goods at the time of incorporation into the works and the labour & services are very much ascertainable, they are eligible to pay tax as per Rule 17(1)(e) of the APVAT Rules. The appellant also expressed their readiness to produce the books of account along with other relevant documentary evidence as and when called for and pleaded for an opportunity to do so.

In the facts and circumstances of the case, I feel it just and proper to remit the matter back to the territorial Assessing Authority, who shall cause verification of the claim of the appellant with reference to the books of account and other relevant records / 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 tax amounting to ₹5,08,808/- and the appeal thereon remanded.

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

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

To

The Appellants.

Copy to the Commercial Tax Officer, M.G.Road Circle, Hyderabad.

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

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