



PROCEEDINGS OF ASSISTANT COMMISSIONER (ST), M.G. ROAD-S.D. ROAD CIRCLE
CONSEQUENTIAL ORDERS ON DEMAND OF APPEAL

Presented by: Lakshmi

A.O No:17545

TIN No. 36570317033/2015-16 to 2016-17/VAT

Dated: 13-07-2022.

Sub: VAT Act 2005 – M/s Serene Constructions LLP, Secunderabad. - Assessment completed for the period 2015-16 to 2016-17- orders passed- Dealer preferred appeal before the ADC(CT) Punjagutta Division – Appeal Remanded – notices issued for production of books – not responded – show cause notice issued – Objections called for – sought extension of time – time granted – Final notice issued – personal hearing opportunity provided – not responded – orders passed - Regarding.

- Ref: 1) DCTO, Bowenpally Circle, Order No. 27156, Dt: 08-05-2018.
2) Order passed by the Hon'ble ADC (CT) Punjagutta vide AO.No.2412, Dt.28.12.2020.
3) Notice dt.22.01.2021 issued by the undersigned.
4) Notice dt.16.09.2021 issued by the undersigned.
5) Final Notice Dt.01.02.2022 issued by the undersigned.
6) Show cause Notice Dt.30.04.2022 issued by the undersigned.
7) Letter Dt.09.05.2022 filed by the dealer.
8) Final notice Dt.24.06.2022 issued by the undersigned.
9) Notice for personal hearing Dt.05.07.2022 issued by the under signed.

M/s. Serene Constructions LLP, M.G.Road, Secunderabad, are registered dealers on the rolls of Assistant Commissioner (ST), M.G. Road - S.D. Road Circle, with TIN 36570317033 w.e.f. 01.09.2015, and are doing business of construction and selling of Flats. In the reference 1st cited their assessment under VAT Act, 2005 for the period 2015-16 to 2016-17 was completed on the following under declared tax:

Sl. No.	Year	Tax under declared
1	2015-16	73,080=00
2	2016-17	4,85,728=00
	Total	5,58,808=00

Tax levied	:Rs.5,58,808-00
Tax paid with VAT 200 return	:Rs. 50,000-00
Tax due	:Rs.5,08,808-00

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

In the light of the Hon'ble ADC orders, vide references 3rd, 4th & 5th cited above three notices were issued to the dealer for production of books of account if any as per the instructions issued by the Hon'ble ADC. But the dealer has not responded to the notices so issued. Hence in the absence of dealer's response, the undersigned vide reference 6th cited while extracting the contents of Hon'ble ADC orders, has issued a show cause notice as under:

"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 Rs.5,08,808/- and the appeal thereon remanded.

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

In order to pass the consequential order, in the light of instructions issued by the Hon'ble ADC, the dealer has to submit documentary evidence to substantiate their claim. However, so far, they have not submitted any documentary evidence. Hence it is proposed to issue Show cause Notice by confirming the original orders as under:

Sl. No.	Year	Tax under declared
1	2015-16	73,080-00
2	2016-17	4,85,728-00
	Total	5,58,808-00

Tax levied	:Rs.5,58,808-00
Tax paid with VAT 200 return	:Rs.50,000-00
Tax due	:Rs.5,08,808-00
Less: tax paid while filing appeal	:Rs.63,601-00 vide challan No 1800395406 Dt. 15.06.2018
Balance	:Rs.4,45,207-00"

In response to the above show cause notice, vide reference 7th cited the dealer has filed a letter Dt.09-05-2022 requesting to grant of 30 days additional time for submitting their reply. The same was granted to the dealer as per his request. But the dealer has neither submitted any objections nor filed any documentary evidence. However, under the principles of natural justice vide references 8th and 9th cited two more opportunities are provided to the dealer for filing of objections/documentary evidence and to avail personal hearing opportunities before the undersigned on dates 01.07.2022 and 11.07.2022. But so far the dealers have neither filed any

objections/documentary evidence nor availed personal hearing opportunity. Hence it is construed that the dealer is not having any valid objections against the proposed consequential orders. Therefore the consequential orders are hereby passed by confirming the show cause notice as under:

Sl. No.	Year	Tax under declared
1	2015-16	73,080=00
2	2016-17	4,85,728=00
	Total	5,58,808=00

Tax levied :Rs.5,58,808-00

Tax paid with VAT 200 return :Rs.50,000-00

Tax due :Rs.5,08,808-00

Less: tax paid while filing appeal :Rs.63,601-00 vide challan No 1800395406 Dt. 15.06.2018

Balance :Rs.4,45,207-00"

The dealer has to pay the demand of **Rs.4,45,207-00** within 15 days of receipt of this order failing which recovery proceedings will be initiated.

The dealer can file an appeal against this order before the appropriate Appellate authority within the prescribed time.

G. Vijaya Lakshmi
Assistant Commissioner(ST)(FAC)
M.G. Road S.D. Resid Circle, (FAC)
Begumpet Division, Hyderabad
Begumpet Division, Hyderabad

To,

M/s. Serene Constructions LLP.

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