

PROCEEDINGS OF THE APPELLATE DEPUTY COMMISSIONER(CT),
PUNJAGUETA DIVISION, HYDERABAD
PRESENT: SMT. Y. SUNITHA,

ADC Order No.679

Date of hearing:09-03-2021

Appeal No.BV/32/2020-21

Date of order :10-08-2022

1. Name and address of the Appellant. : M/s Alpine Estates,
Hyderabad.
2. Name & designation of the Assessing Authority. : Commercial Tax Officer,
M.G.Road-S.D.Road Circle, Hyd.
3. No.,Year & Date of order : TIN No.36635086045,dt.31-03-2020,
(2013-14 / Tax)
4. Date of service of order : 08-06-2020
5. Date of filing of appeal : 08-07-2020
6. Turnover determined by The Assessing Authority : -
7. If turnover is disputed:
(a) Disputed turnover : ₹2,93,47,513/-
(b) Tax on disputed turnover : ₹ 14,67,376/-
8. If rate of tax disputed:
(a) Turnover involved : -
(b) Amount of tax disputed : -
9. Amount of relief claimed : ₹14,67,376/-
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 Alpine Estates, Hyderabad, the appellant herein, is a registered dealer under the TVAT Act bearing TIN 36635086045 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.52195) passed by the Assessing Authority for the tax periods falling under the year 2013-14 under the TVAT Act, disputing the tax liability on a turnover of ₹2,93,47,513/- (tax effect - ₹14,67,376/-).

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

“At the outset, it is submitted that the impugned assessment order is highly illegal, arbitrary and is passed against the principles of natural justice.

It is submitted that the appellant has produced all the relevant records, books of account in connection with the audit notice issued by the learned AC within the time allowed by him. However, the learned AC without properly understanding the nature of business conducted by the appellant and without proper appreciation of the provisions of the TVAT Act relating to the liability of the builders under the TVAT Act has issued a show cause notice proposing to levy huge amount of tax of ₹14,67,376/-.

It is submitted that the appellant is in the business of constructing and selling apartments, villas etc and has opted for composition scheme under Section 4(7)(d) of the Act for making payment of tax on the turnover relating to selling of apartments / villas. It is submitted that as per Section 4(7)(d) of the Act, the VAT dealer is liable to pay tax only on 25% of the gross amount received or receivable at the rate of 5% and the balance 75% of the gross consideration received is not liable to tax.

It is submitted that during the year the appellant has received total consideration of Rs.14,51,91,248/- towards constructing selling apartments / villas and accordingly paid tax of 5% on 25% of Rs.14,51,91,243/- i.e., on Rs.3,62,97,812/- amounting to Rs.18,14,891/- and claimed exemption on the 75% of the turnover of Rs.10,90,93,431/-. However, the learned AC in the show cause notice proposed to levy tax even on this exempted turnover of Rs.10,90,93,431/- by allowing 75% exemption under Section 4(7)(d) of the Act which is highly illegal. The appellant therefore submits that learned AC has not properly considered the turnovers while issuing show cause notice and the same amount is confirmed without properly rechecking before levying tax. Hence the appellant submits that as the learned AC wrongly proposed to tax on exempted turnover under Section 4(7)(d) of the Act, the same is liable to be set aside.

Rs.82,96,623/-: The appellant submits that the learned AC in the impugned order has levied tax on the above alleged turnover by claiming that there is difference between the turnover reported in monthly VAT returns and the P & L account for the year. The appellant submits that the learned AC is not justified in levying tax on this turnover without allowing sufficient time to the appellant to verify the records and make a reply. It is submitted that this turnover is not liable to tax at all as this income is not relating to sale of apartments / villas during the year and the appellant will produce the relevant information at the time of personal hearing.

It is also submitted that the learned AC is also grossly failed to give sufficient opportunity to the appellant to represent its case. It is submitted that during the period the entire city of Hyderabad is under lockdown and nobody in the private employment is allowed to open the offices. The appellant is not able to file effective reply for these reasons and expecting one more notice from the learned AC for submitting the objections. However, the learned AC without even giving the opportunity of personal hearing concluded in the assessment proceedings in hasty manner and on this ground also the impugned order is liable to be set-aside.

In view of the above grounds and the other grounds that may be urged at the time of hearing of the appeal, the appellant prays the Honorable Appellate Deputy Commissioner to set aside the impugned assessment order 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. The Authorised Representative also furnished certain documentary evidence 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. In the impugned orders, at the pre-assessment stage, the Assessing Authority observed that though the appellant had claimed exemption on a turnover of ₹10,90,93,431/- but failed to furnish the evidence to support such claim. Accordingly, the Assessing Authority arrived at a turnover of ₹2,72,73,358/- (i.e., equal to 25% of ₹10,90,93,431/-) and proposed to

levy tax thereon at 5% which comes to ₹13,63,668/-. The Assessing Authority further arrived at a turnover of ₹82,96,623/- towards difference between the turnovers reported in the monthly returns and the turnovers reflected in the Profit & Loss account and arrived at a turnover of ₹20,74,155/- (i.e., equal to 25% of ₹82,96,623/-) and proposed to levy tax thereon at 5% which comes to ₹1,03,708/-. In all, the Assessing Authority arrived at a tax due at ₹14,67,376/- and issued a show cause notice. On an observation that though the said notice was served on the appellant on 20-03-2020, but, however, the appellant had not filed any reply, the Assessing Authority passed the impugned orders confirming the proposals made in the show cause notice.

Such order of assessment is vehemently assailed by the appellant stating that the Assessing Authority is not justified in arriving at the disputed tax towards tax due. It is explained that the appellant is dealing in execution of works contract i.e., construction and selling of residential apartments / villas by exercising option to pay tax under composition under Section 4(7)(d) of the TVAT Act and accordingly paid tax on the 25% of the total consideration received on account of execution of such works as per the said provisions of the Act and as such bringing the remaining 75% of the consideration received by the appellant is against the provisions contained under Section 4(7)(d) of the TVAT Act since the provisions contained under the said Section clearly and categorically prescribes the payment of tax at composited rate on the 25% of the consideration received or receivable on account of execution of construction and selling of apartments by exercising the option to pay tax under composition. It is further stated that the Assessing Authority is also not justified in arriving at the differential turnover for the purpose of assessment and to tax thereon.

It is further contended that when the Assessing Authority issued a show cause notice and subsequent passing of the impugned order, there is

a complete lockdown not only in the Hyderabad city but also in the entire State of Telangana and in the entire country due to COVID 19 pandemic situation and as such the appellant prevented from filing the objections to the show cause notice issued. It is also stated that had the Assessing Authority provided one more opportunity after relaxation in lockdown, they would have filed their objections along with all the relevant documentary evidence, but the Assessing Authority proceeded to pass the impugned order, which is not only against the situation prevailed at that time, but also against the principles of natural justice. This claim of the appellant is found to be reasonable.

For the facts and reasons discussed above, more particularly the submissions made by the appellant with regard to non-responding to the notice issued for filing objections are convincing, without going into the merits of the case, I feel it just and proper to remit the matter back to the Assessing Authority with a direction to provide an opportunity to the appellant file their objections along with documentary evidence if any, consider the same and then 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 ₹2,93,47,513/- (tax effect - ₹14,67,376/-) 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-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.

