

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

PRESENT: SMT. Y. SUNITHA,

ADC Order No.432

Appeal No.BV/26/2018-19

Date of hearing: 13-02-2019

Date of order : 27-02-2019

1. Name and address of the Appellant. : M/s Nilgiri Estates, Hyderabad.
2. Name & designation of the Assessing Authority. : Commercial Tax Officer, Maredpally Circle, Hyd.
3. No., Year & Date of order : TIN No.36607622962, dt.23-04-18, (July, 2015 to June, 2017 / Tax)
4. Date of service of order : 23-04-2018
5. Date of filing of appeal : 22-05-2018
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 : ₹16,03,22,162/-
(b) Amount of tax disputed : ₹ 1,57,41,135/-
9. Amount of relief claimed : ₹1,57,41,135/-
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 Act bearing TIN 36607622962 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 23-04-2018 (A.O.No.25460) passed by the Commercial Tax Officer, Maredpally Circle, Hyderabad (hereinafter referred to as the Audit Officer) for the tax periods from July, 2015 to June, 2017 under the TVAT Act, disputing the tax liability / rate of tax on a turnover of ₹16,03,22,162/- (tax effect - ₹1,57,41,135/-).

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 learned CTO issued a notice of assessment that the appellant has not opted for composition by filing Form VAT 250 and in the absence of detailed books of account the appellant is proposed to be taxed under Section 4(7)(a) read with Rule 17(1)(g) by allowing standard deduction. The learned CTO has not shown computation for arriving at the tax of Rs.2,42,33,973/- in the notice even though he has extracted the turnovers as per the returns and as per the books.

In the reply submitted the appellant has clearly stated that at the time of commencement of business, it has filed form VAT 250 manually in the office of the Commercial Tax Officer, M.G.Road Circle opting for composition under Section 4(7)(d) of the Act. In the reply filed to the notice the appellant has clearly stated that the appellant could not trace out the original acknowledged copy, as the concerned accounts employees have left the firm and that it has paid VAT @ 1.25% at the time of registration of villas / flats and further that it has not claimed any input tax credit in the returns filed. The appellant has submitted VAT paid details with. The appellant has also submitted that it has maintained all books of account and as such the appellant may be taxed under Section 4(7)(a) by allowing input tax credit. Though original acknowledged copy of Form VAT 250 could not be traced, still the circumstantial evidence i.e., paying tax @ 1.25% and non-claim of ITC would amply prove that the appellant has opted for composition scheme.

The learned CTO in the assessment order stated that onward filing of Form VAT 250 electronically was implemented since 2012 and if the appellant is ignorant of this facility, it must produce the copy of VAT 250,

but it had failed to file a copy of Form VAT 250. The learned CTO proceeded to levy tax under Section 4(7)(a) under standard deduction method only on the ground that the appellant failed to file Form VAT 250.

Appellant submits that when the appellant has sincerely affirmed before the learned CTO that Form VAT 250 filed manually could not be traced, as the same was filed in the year 2015 at the time of commencement of business i.e., 01-07-2015. The learned CTO ought to have understood that the appellant ought not have paid tax @ 12.5% on the total receipts unless it has filed Form VAT 250 which is also evidenced by the fact that he has not claimed input tax credit. It follows from this that the learned CTO has hastily concluded assessment proceedings.

In any case it is submitted that filing of Form VAT 250 is only an intimation that the appellant intends to discharge his tax liability on the turnover relating to construction and selling of villas / apartments under composition method. All the other conditions that are required to be followed by the appellant such as non-claiming of input tax credit, paying tax @ 1.25% at the time of registration of the villas etc. The appellant therefore submits that he has opted for composition scheme for payment of VAT.

It is respectfully submitted that even under the present GST period, filing of TRAN 1 is to be made online. But in the case of Honourable High Court Judgment in M/s Vihan Motors, Muzafarnagar TRAN 1 is filed manually and requested the GST department to give credit for the tax which they are eligible as per law. On refusal to give credit the dealer filed Writ Petition before the Honourable High Court and the Honourable High Court in Writ Tax No.774/2018 has given a direction to the respondents to process the manual claim of credit filed by the petitioner in accordance with law. The appellant therefore submits that filing of Form VAT 250 is required to be considered. Filing of Form VAT 250 is only procedural in nature. Such filing can be evidenced through other means also.

Without prejudice to the above contentions it is submitted that levy of tax on the appellant by following Rule 17(1)(g) is not correct as the appellant in reply to the show cause notice has categorically mentioned that they are maintaining the regular books of accounts and based on the books the net tax liability has to be arrived. However, the assessing authority without properly considering this plea of the appellant has passed the impugned proceedings which are therefore bad in law and are against the principles of natural justice. The appellant submits that the tax liability under the VAT Act is to be calculated by following procedure prescribed under Rule 19 of the TVAT Rules.

In view of the above grounds and other grounds that may be urged at the time of hearing the appellant prays the Honourable Appellate Deputy Commissioner to set-aside the impugned order of the learned CTO as illegal 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. The Authorised Representative also furnished certain documentary evidence and pleaded for setting-aside of the impugned orders.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. In the impugned orders, at the pre-assessment stage, observed that the appellant was doing business of executing works contract in the nature of construction and selling of residential apartments and though paying tax at 5% on the 25% of the value of sale deeds, failed to exercise composition by filing Form VAT 250. Accordingly, the Audit officer proposed to determine the turnovers of the appellant for the tax periods disputed tax periods under the provisions contained 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% and issued a show cause notice. In response to the said notice, the appellant filed their objections mainly stating that they have already filed Form VAT 250 manually which was not readily traceable and since they are paying tax at 1.25% on the total consideration received and not claiming any input tax credit, they are rightly eligible to pay tax at such rate. Alternatively, it is also stated by the appellant that in any event they are eligible for not only deductions towards labour and services but also eligible for input tax credit since they are maintaining the books of account regularly and properly. The Audit Officer, however, observed that though the Form VAT 250 should be filed electronically and even if is to be considered that the same was ignored by the appellant and filed such form manually, they failed to file the documentary evidence to show that such Form was in fact filed

manually. Accordingly, the Audit Officer rejected the objections of the appellant to the effect that they are eligible to pay tax under the provisions contained under Section 4(7)(d) of the TVAT Act. The Audit Officer also rejected the alternative claim of the appellant that the determination of their turnovers by allowing a standard deduction is incorrect as they are maintaining books of account and eligible for various deductions towards labour and services as well as eligible for input tax credit, on the ground that the appellant failed to produce the books of account. With these observation, the Audit Officer passed the impugned orders, confirming the proposals as made in the pre-assessment notice.

The impugned order passed by the Assessing Authority determining the turnovers of the appellant under Section 4(7)(a) of the TVAT Act read with Rule 17(1)(g) of the TVAT Rules, is vehemently assailed by the appellant and the Authorised Representative on more than one count. The admissibility or otherwise of the said claims are examined hereunder:

Firstly, it is the claim of the appellant and the Authorised Representative that since the appellant is doing business in construction and selling of apartments / residential house, their turnovers are to be assessed to tax at 1.25% as per the provisions contained 4(7)(d) of the VAT Act even though they are not filed Form VAT 250 online in as much as they have filed such Form manually and also as filing of such Form is only an intimation to pay tax under composition and as long as the appellant fulfilled the other conditions i.e., payment of tax at 1.25% on total consideration and non-claiming of input tax credit, they are rightly eligible to pay tax under the said provisions.

In order to examine the above claim of the appellant and the Authorised Representative, it is necessary to take note of the provisions contained under Section 4(7)(d) of the TVAT Act which reads as under:

“4(7) Notwithstanding anything contained in the Act;-

a) to (c)

d) Any dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may opt to pay tax by way of composition at the rate of 5% of twenty five percent (25%) of the consideration received or receivable or the market value fixed for the purpose of stamp duty whichever is higher subject to such conditions as may be prescribed;

e) any dealer having opted for composition under clauses (b) or (c) or (d), purchases or receives any goods from outside the State or India or from any dealer other than a Value Added Tax dealer in the State and uses such goods in the execution of the works contracts, such dealer shall pay tax on such goods at the rates applicable to them under the Act and the value of such goods shall be excluded (from the total turnover) for the purpose of computation of turnover on which tax by way of composition at the rate of four percent (4%) is payable.;

(Clause (e) is inserted by the Act No 23 of 2005 dated 26th Oct 2005 with effect from 29-08-2005)

(The words “clauses (b), (c) and (d)” are substituted with the words “ clauses (b) or (c) or (d)” by Act No 5 of 2007 dated 22-01-2007 with effect from 01-09-2006.)

(The words in brackets are added vide Act No 28 of 2008 dated 24-09-2008 with effect from 24-09-2008)”

As can be seen from the above provisions, any dealer engaged in construction and selling of residential apartments, houses etc., may opt to pay tax by way of composition at the rate of 5% of 25% of the consideration received or receivable.

Further, as per Rule 17(4) of the TVAT Rules, where a dealer executes a contract for construction and selling of residential apartments / houses, such dealer must registered themselves as a VAT dealer and shall

notify the prescribed authority on Form VAT 250 of their intention to avail composition for the works as specified.

From the above provisions, it is to be concluded that in order to avail the benefit of composition of tax at 1.25% by a dealer engaged in construction and selling of residential apartments / houses, such dealer not only have to get themselves enrolled as a VAT dealer under the provisions contained under the TVAT Act, but also notify the prescribed authority on Form VAT 250 of their intention to avail such composition on the works so done. In the case on hand, there is no dispute in the fact that the appellant neither opted to pay tax by way of composition duly filing Form 250 as prescribed through online nor furnish any sort of documentary evidence to prove that they have filed such Form VAT 250 manually. Such being the case, the claim of the appellant that their turnovers are to be assessed under Section 4(7)(d) of the TVAT Act cannot be sustained. Consequently, the same are rejected as devoid of merit.

Coming to the alternative plea of the appellant even if their turnovers are not to be considered under the provisions contained under Section 4(7)(d) of the TVAT Act, since they are maintaining the books of account correctly wherefrom the value of goods at the time of incorporation and other labour and service charges were very much ascertainable, their turnovers are to be determined under Section 4(7)(a) of the TVAT Act read with Rule 17(1)(e) of the TVAT Rules; 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 i.e., Rule 17(1)(e) of the TVAT Rules, besides eligible for input tax credit at 75% as per Section 13(7) of the said Act. However, as per the proviso appended to the above clause, where a dealer did not maintain the accounts so as to ascertain the value of goods at the time of incorporation in the works, such dealer has to pay tax at the rate of 14.5% during the disputed tax periods 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 and in such a situation, the said dealer is not eligible to claim input tax credit.

In support of the contentions raised, in this regard, the Authorised Representative also furnished certain documentary evidence like copies of Trial Balance, copies of Profit & Loss Accounts, copies of Income Tax returns etc., and expressed the appellant's readiness to produce the same along with books of account and other relevant documentary evidence before the Assessing Authority as and when called for and pleaded for an opportunity to do so.

For the facts and reasons discussed above and since the Audit Officer has rejected the claims of the appellant, in this regard, on the ground that the appellant had not produced the books of accounts and also having regard to the fact that the appellant now expressed their readiness

to produce the books of account and other relevant documentary evidence / related records as and when called for; I feel the issue involved herein required re-consideration at the Assessing Authority's end. Hence, in fitness of matters, I feel it just and proper to remit the matter back to the Assessing Authority, who shall verify the claims of the appellant with reference to the books of account and other relevant and related documentary evidence / records that would be produced by the appellant and pass orders afresh granting necessary relief to the appellant to the extent they are eligible for in accordance with the provisions of law, duly bearing in mind my observations made above and also 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 ₹16,03,22,162/- (tax effect - ₹1,57,41,135/-) 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 Commercial Tax Officer, Maredpally 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.