



PROCEEDINGS OF ASSISTANT COMMISSIONER (ST), M.G. ROAD-S.D. ROAD CIRCLE
CONSEQUENT TO THE ORDER OF APPEAL

Present: G. Vijaya Lakshmi
Road Circle, Secunderabad

A.O No:17546

TIN No.36607622962/July 2015- June 2017/VAT

Dated: 13-07-2022.

Sub: VAT Act 2005 – M/s. Nilgiri Estates, Secunderabad. - Assessment completed for the period July 2015- June 2017- 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) CTO, Maredpally Circle. Order No.25460 , Dt: 23-04-2018.
2) Order passed by the Hon'ble ADC (CT) Punjagutta vide AO.No.432. Dt.27-02-2019.
3) Notice dt.16.09.2021 issued by the undersigned.
4) Notice dt.01.02.2022 issued by the undersigned.
5) Show cause Notice Dt.10.05.2022 issued by the undersigned.
6) Letter Dt.18.05.2022 filed by the dealer.
7) Final notice Dt.24.06.2022 issued by the undersigned.
8) Notice for personal hearing Dt.05.07.2022 issued by the undersigned

M/s Nilgiri Estates, Secunderabad, is a registered dealer under VAT and on the rolls of Assistant Commissioner (ST), M.G.Road-S.D.Road Circle with TIN: 36607622962. The assessee is doing business in Construction of Flats. In the reference 1st cited their assessment under VAT Act, 2005 for the period July 2015- June 2017 was completed on the following under declared tax:

Total Turnover (July' 2015 to June' 2017)	Rs.27,33,22,717-00
Delete Turnover will be assessed under GST	Rs.11,30,00,555-00
Turnover assessed under T VAT	Rs.16,03,22,162-00
Standard Deduction @ 30% as per Rule 17(1)(g)	Rs.4,80,96,649-00
Taxable Turnover	Rs.11,22,25,513-00
Tax @ 14.5%	Rs.1,62,72,699-00
Tax paid	Rs.5,31,564-00
Balance payable	Rs.1,57,41,135-00

Total tax due to Government : Rs.1,57,41,135-00

Aggrieved by the orders, the dealer has 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 2nd cited which is extracted 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, 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 it 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 Rs.16,03,22,162/- (tax effect – Rs.1,57,41,135/-) 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:

Total Turnover (July' 2015 to June' 2017)	Rs.27,33,22,717-00
Delete Turnover will be assessed under GST	Rs.11,30,00,555-00
Turnover assessed under T VAT	Rs.16,03,22,162-00
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Tax @ 14.5%	Rs.1,62,72,699-00
Tax paid	Rs.5,31,564-00
Balance payable	Rs.1,57,41,135-00

Total tax due to Government	:Rs. 1,57,41,135-00
Less: tax paid while filing appeal	:Rs. 19,67,642-00 vide challan No.1800332587 Dt.22.05.2018
Balance	:Rs. 1,37,73,493-00

In response to the above show cause notice, vide reference 6th cited the dealer has filed a letter Dt.18-05-2022 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 7th and 8th 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:

Total Turnover (July' 2015 to June' 2017)	Rs.27,33,22,717-00
Delete Turnover will be assessed under GST	Rs.11,30,00,555-00
Turnover assessed under T VAT	Rs.16,03,22,162-00
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Tax @ 14.5%	Rs. 1,62,72,699-00
Tax paid	Rs. 5,31,564-00
Balance payable	Rs. 1,57,41,135-00

The dealer has to pay the demand of **Rs.1,57,41,135-00** 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.


Assistant Commissioner (ST) (FAC)
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Begumpet Division, Hyderabad
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