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To,
The Appellate Dy. Commissioner (CT)
Punjagutta Division,
Hyderabad.

Sir,

Sub:- Filing the appeal in the case of M/s. **Nilgiri Estates., MG Road, Secunderabad.**
For the Period July 2015 to June 2017/VAT – reg.

Please find enclosed herewith the following appeal papers:

1. Form –APP 400 2 copies.
2. Grounds of Appeal 2 copie..
3. Challan No. 6201693353 for Rs.1000/- towards appeal fee.
4. A.O.No.17546 dt.13/7/2022 passed by Assistant Commissioner (ST) (FAC),
M.G.Road – S D Road Begumpet Division, Hyderabad Telangana.
5. Form APP 400A
6. Letter relating to the proof of payment 12.5% disputed tax challan enclosed.
7. Vakalatnama

Thanking you
Yours sincerely

M.Ramachandra Murthy
Advocate & Tax Consultant



Nilgiri Estates

5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad

Tax Period: July, 2015 to June, 2017/VAT

Statement of Facts:-

- 1) The appellant is a registered VAT dealer engaged in the business of construction and selling of independent residential villas and is an assessee on the rolls of the CTO, MG Road Circle, Hyderabad with TIN36607622962. The appellant opted to pay tax @ 1.25% under Section 4 (7) (d) of the TVAT Act, 2005 (hereinafter referred to as Act) under composition scheme.
- 2) In the course of business the appellant enters into agreement with their prospective buyers for sale of villas along with certain amenities. The agreement of sale which is the mother or initial agreement consists of the consideration received through sale of land, development charges of land and cost of construction of the entire villa. The appellant has paid VAT @ 1.25% on the total consideration received from these three components of the agreement.
- 3) Claiming authorization from the DC (CT), Begumpet division the CTO, Marredpally Circle (for short CTO) issued notice of assessment in Form VAT 305 A dated 07-03-2018 proposing tax of Rs.2,47,28,037/- on the contractual receipts under Section 4 (7) (a) read with Rule 17 (1) (g) of VAT Rules by allowing standard deduction during the tax period July, 2015 to June, 2017.
- 4) The appellant has filed detailed objections to the show cause notice by claiming that they are liable to tax under Section 4 (7) (d) of the Act only and not under Section 4 (7) (a) of the Act. However without properly considering the objections filed the learned CTO confirmed the proposed levy under Section 4 (7) (a) read with Rule 17(1)(g) after allowing standard deduction of 30% on a turnover of Rs. 16,03,22,162/- demanding a tax of Rs. 1,57,41,135/-.

- 5) Aggrieved by such assessment order, appellant-preferred appeal before this Honourable Authority. On a consideration of the grounds and the documents, this Honourable authority has set aside the said assessment order and remanded the matter with specific directions to the assessing authority vide order No.432 dated 27/02/2019.
- 6) On such remand, the jurisdictional authority ie., the Assistant Commissioner(ST)(FAC), M.G. Road-S.D. Road Circle (for short AC) issued Show cause notice dated 10/05/2022 to produce books of account to pass consequential orders . Pursuant to that notice, the appellant has filed letter on 18/05/2022 requesting time for submission of objections and documentary evidence. However without giving sufficient time, the learned AC passed the consequential order No.17546 dated 13/07/2022 raising the very same demand of **Rs.1,57,41,135.**
- 7) Aggrieved by such consequential order, appellant prefers this appeal on the following grounds, amongst others:-

Grounds of Appeal:-

- a. The impugned order is ex-facie illegal, arbitrary, improper and unjustifiable and is passed against the principles of natural justice and hence the same is liable to be set aside.
- b. It is submitted that the learned AC is not justified in passing the impugned order in haste without providing sufficient opportunity. It is submitted that the learned ADC has set aside the first assessment order and has remanded the issue back to the assessing authority to pass consequential orders.
- c. It is submitted that as per Section 37 of the TVAT Act, the assessing authority is having time of 3 years to pass the consequential orders in order to give effect to the order passed by the learned Appellate Deputy Commissioner. It is submitted that the learned ADC has passed the appeal order

on 27.02.2019 and the assessing authority is having time up to 26.02.2022 to pass the consequential orders. It is true that the learned AC has issued notice for production of documents, however, due to illness of the concerned accounts head who is looking about the VAT issues, the appellant is not able to provide the relevant data to the learned AC. However, the learned AC without giving sufficient further time to the appellant has passed the impugned order with the very same demand.

- d. It is submitted that the appellant is having all the information that is required to complete the assessment and this information is already produced before this Honourable ADC.
- e. The appellant submits that the learned AC ought to have issued one more notice to the appellant instead of passing the impugned order in haste. The appellant therefore submits that the impugned order is liable to be set aside on the principles of natural justice. In any case appellant submits that they are having strong case on merits.
- f. Without prejudice to the above submissions the appellant submits as under.
- g. It is submitted that the impugned order is highhanded and non-speaking beyond a point. It has been passed in clear violation of principles of natural justice, in as much as the learned authority has refused to look into the letter of objections as nothing has been discussed by him.
- h. It is sad that the learned authority has not at all considered single objection. The impugned order has been passed only for the purpose of harassing a genuine dealer and nothing else, in the humble submission of the appellant.
- i. 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.

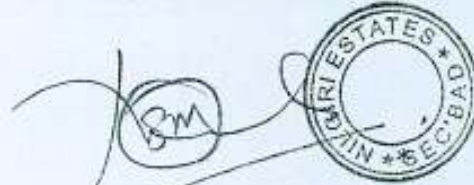
- j. In the reply submitted the appellant has clearly stated that at the time of commencement of business, it has filed form VAT 250 manually in the office of the CTO, MG Road Circle opting for composition under Section 4 (7) (d) of the Act. In the reply filed to the notice the appellant has clearly stated that the appellant could not trace out the 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 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 acknowledged copy of form VAT 250 could not be traced, still the circumstantial evidence ie., paying tax @ 1.25% and non-claim of ITC, would amply prove that the appellant has opted for composition scheme.
- k. 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.
- l. 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 @1.25% 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.

- m. In any case it is submitted that filing of Form 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 for claiming the benefit of composition scheme have been duly 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.
- n. 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 Hon'ble Allahabad 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.
- o. 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 even 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 required to be calculated by following the procedure prescribed under Rule 19 of the TVAT Rules.

- p. 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.



(APPELLANT)

APPLICATION FOR STAY OF COLLECTION OF DISPUTED TAX
[Under Section 31(2) & 33(6)] [See Rule 39(1)]

Date Month Year

01. Appeal Office Address:
 To,
 The Appellate Deputy Commissioner (CT)
 Punjagutta Division, Hyderabad

	05	2022
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02	TIN	36607622962
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03. Name M/s. Nilgiri Estates,
 Address: 5-4-187, 3&4, 2nd Floor,
 Soham Mansion, M.G. Road,
 Secunderabad.

04.	Tax period	July'2015 to June'2017/VAT
05.	Authority passing the order or proceeding disputed.	Consequential order No.17546 dt.13/07/2022 passed by Assistant Commissioner (ST) (FAC) M.G. Road - S.D. Road Circle, Begumpet Division, Hyderabad.
06.	Date on which the order or proceeding was Communicated.	13/07/2022
07.	(1) (a) Tax assessed	Rs.1,57,41,135/-
	(b) Tax disputed	Rs.1,57,41,135/-
	(2) Penalty / Interest disputed	NIL
08.	Amount for which stay is being sought	Rs.1,57,41,135/-
09.	Address to which the communications may be sent to the applicant.	M/s. Nilgiri Estates, 5-4-187, 3&4, 2 nd Floor, Soham Mansion, M.G. Road, Secunderabad.

Signature of the Dealer(s)

Signature of the Authorised Representatives if any

10. GROUNDS OF STAY

- 1.) Substantial question of facts and law that may arise in the appeal.
- 2.) The appellant will be hard hit if it is called upon to pay this heavy amount of tax pending disposal of the appeal.
- 3.) The grounds that are stated in the main appeal may kindly be read as grounds of this appeal.
- 4.) The appellant has already paid 12.5% of disputed tax for the purpose of admission of the appeal and hence it is requested grant stay on the balance disputed tax till the disposal of the appeal.
- 5.) In this regard the appellant relied on the latest decision of the Hon'ble Supreme Court in a case wherein the Hon'ble Court dismissed the SLP filed against the order of the Hon'ble High Court of Andhra Pradesh & Telangana in the case of Deputy Commercial Tax Officer-I, Bhavanipuram Circle, Vijayawada Vs. Sri Dedeepriya Paints in Diary No.11711 of 2019 dt.22/04/2019.

The Honourable High Court of Andhra Pradesh & Telangana in its decision in WP No.20922 of 2018 dated 22.06.2018 in the case of Sri Dedeepriya Paints Vs Deputy Commercial Tax Officer-I, Bhavanipuram Circle, Vijayawada held as follows:-

"When the petitioner concern already paid 12.5% of the disputed tax amount for the purpose of maintaining an appeal as required by law, it would be wholly unjust for the tax authorities to demand the balance of the disputed tax amount notwithstanding the pendency of the appeal".

- 1.) The appellant relied on the latest decision of the Honourable High Court of Telangana in the case of M/s. Capart Industries, Hyderabad in WP Nos.3954,3976,4089,4115,4518,4556 and 4577 of 2020, wherein it is held as follows:-

" 4. Counsel for the petitioner relies upon the order of the Division Bench of this court in Sri Dedeepriya Pains Vs. Deputy Commercial Tax Officer - I wherein a similar action on the part of the Department in proposing to collect the balance disputed tax through 12.5% of the disputed tax amount was already deposited with the Department pending appeal before the Appellate Deputy Commissioner fell for consideration. In that case, this court held that once the assessee had already paid 12.5% of the disputed tax amount for the purpose of maintaining an appeal as required by law, it would be wholly unjust for the tax authorities to demand the balance of the disputed tax amount notwithstanding the pendency of appeal.

5. This above order was later confirmed by the Supreme Court in SLP (CIVIL)Diary No.11711 of 2019 on 22.04.2019.

6. The special Government Pleader for Commercial Taxes appearing for respondents does not dispute the principle laid down in these cases.

7. Since the petitioner had already paid 12.5% or more of the disputed tax pending appeals before the Appellate Deputy Commissioner and the

Telangana VAT Appellate Tribunal, we are of the considered opinion that the respondents are not justified in refusing to grant the petitioner stay of collection of the balance disputed tax and issuing Garnishee orders to the Petitioner's banker for recover of the balance disputed tax".

Copy of the High Court order mentioned above is attached herewith

Hence it is just and necessary that the Appellate Dy. Commissioner (CT) may be pleased to grant stay of collection of the disputed tax of Rs.1,57,41,135/- pending disposal of the appeal.

VERIFICATION

I, _____ applicant (s) do hereby declare that what is stated above is true to the best of my / our knowledge and belief.

Verified today the _____ day of August'2022



Signature of the Dealer(s)

Signature of the Authorised Representatives if any

FORM APP 400
FORM OF APPEAL UNDER SECTION 31
[See Rule 38(2)(a)]

1. Appeal Office Address : The Appellate Dy. Commissioner (CT)
Punjagutta Division, Hyderabad
 2. TIN/GRN : 36607622962
 3. Name & Address : M/s. Nilgiri Estates,
5-4-187, 3&4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad.
 4. I wish to appeal the following decision /
assessment received from the tax office on : 23/04/2018
 5. Date of filing of appeal : /05/2018
 6. Reasons for delay (if applicable enclose a
separate sheet : Not Applicable
 7. Tax Period / Tax Periods : July'2015 to June'2017/VAT
 8. Tax Office decision / assessment Order No. : Consequential order no.17546
Date. dt.13/07/2022 passed by
Assistant Commissioner (ST) (FAC)
M.G.Road - S.D. Road Circle,
Begumpet Division, Hyderabad.
 9. Grounds of the appeal (use separate sheet
if space is insufficient : Separately Enclosed
 10. If turnover is disputed
 - a) Disputed turnover : NIL
 - b) Tax on the disputed turnover : NIL

If rate of tax is disputed

 - a) Turnover involved : Rs.16,03,22,162-00
 - b) Amount of tax disputed : Rs.1,57,41,135-00
 11. 12.5% of the above disputed tax paid : Rs.19,67,642/-
- Note:** Any other relief claimed : Other grounds that may be urged at the
time of hearing.

(The payment particulars are to be enclosed if ready paid along with the reasons on Form. APP 400A)

12. Payment Details:

a) Challan / Instrument No.	:
b) Date	:
c) Bank / Treasury	: -----
d) Branch Code	: -----
e) Amount	: -----
TOTAL	: -----

Declaration:

I, _____ hereby declare that the information provided on this form to the best of my knowledge is true and accurate.



Signature of the Appellant & Stamp

Date of declaration :

Name :
Designation :

Please Note: A false declaration is an offence.

Nilgiri Estates

5-4-187/3&4, II floor, MG Road,
Secunderabad - 500 003.
Phone: +91-40-66335551

Date:08-08-2022

To,
The Appellate Dy. Commissioner (CT),
Punjagutta Division,
Hyderabad.

Sir,

Sub: TVAT Act, 2005 - Appeal filed in the case of M/s. Nilgiri Estates,
Secunderabad - For the tax period from July'2015 to June'2017 - Proof of
payment 12.5% disputed tax paid - Reg.

Ref: Consequential order no.17546 dt.13/07/2022 passed by
Assistant Commissioner (ST)(FAC), M.G. Road- S.D. Road Circle, Hyderabad.

We submit that aggrieved by the consequential order no.17546 dt.13/07/2022 passed by the Assistant Commissioner (ST)(FAC), M.G. Road- S.D. Road Circle, Hyderabad for the tax period from July'2015 to June 2017-18 (upto June'2017) under the TVAT Act, 2005, we are filing appeal before your Hon'ble Authority. For admission of appeal, we have to pay 12.5% of the disputed tax as under:-

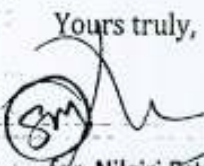
Tax disputed in the appeal	Rs.1,57,41,135/-
12.5% disputed tax	Rs.19,67,642/-

We submit that aggrieved by the assessment order dt.23/04/2018 passed by the Assistant Commissioner(ST), M.G. Road- S.D. Road Circle, Hyderabad for the tax period from July'2015 to June'2017 we have filed first round of appeal before this Hon'ble ADC (CT), Punjagutta Division, Hyderabad by paying Rs.19,67,642/- towards 12.5% of the disputed tax. (copy is enclosed). This Honourable ADC remanded the appeal vide order No.432 dated 27/02/2019.

We submit that consequent on the remand the Assistant Commissioner(ST) (FAC) passed the present consequential order dated 13/07/2022 levying same tax of Rs.1,57,41,135/-. Against the said order we are filing the appeal. As such we have paid 12.5% of the disputed tax and we need not pay anything now.

In view of the above submissions we request to kindly admit the appeal.

Yours truly,


for Nilgiri Estates,

