

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

PRESENT BY SUNITHA,

ADC Order No.142

Appeal No.BV/38/2022-23

Date of hearing:10-01-2023

Date of order :14-03-2023

1. Name and address of the Appellant. : M/s Serene Constructions LLP, 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.36570317033,dt.13-07-2022, (2015-17 / Tax)
4. Date of service of order : 23-07-2022
5. Date of filing of appeal : 18-08-2022
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 : -
(b) Amount of tax disputed : -
9. Amount of relief claimed : ₹5,58,808/-
10. Amount of relief granted : REMANDED
11. Represented by : Sri M. Ramachandra Murthy, Advocate

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 Serene Constructions LLP, Hyderabad, the appellant herein, is a registered dealer under the TVAT Act bearing TIN 36570317033 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 consequential assessment orders dated 13-07-2022 (A.O.No.17545) passed by the Assessing Authority for the tax periods falling under the years 2015-16 to 2016-17 under the TVAT Act, disputing the levy of tax amounting to ₹5,58,808/-.

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

“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.

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.

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 28.12.2020 and the assessing authority is having time up to 27.12.2023 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.

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.

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.

Without prejudice to the above submissions the appellant submits as under.

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.

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.

Appellant submits that the appellant as developer entered into a Memorandum of Understanding (MoU) with Modi Farm House (Hyderabad) LLP (for short MFHLLP) on 31-05-2015 as vendor or owner of land for the construction of the cottage/villa on the farm land admeasuring about 1000 Sq. ft. as per the specifications of Annexure-C to the MOU. Coy of MoU is filed as Annexure-1. The appellant has declared a turnover of Rs. 7,20,000 and 2,88,000/- towards 5% turnover in Form VAT 200 returns filed by the appellant during the years 2015-16 and 2016-17 respectively.

The appellant has also Joint Development Agreement cum General Power of Attorney dated 23-12-2016 with the owners of land to develop the housing project on the Scheduled project and agreement of sale with the owners of land dated 01-02-2017 for sale of the to the prospective purchasers. Xerox copies of the Joint Development agreement dated 23-12-2016 and agreement of sale of flats dated 01-02-2017 are filed as Annexures-3 and 4 respectively. From this tripartite agreement the appellant is the developer of the project and sellers of the villas/flats to the purchasers.

In pursuance of this MOU appellant has received advances of Rs. 7,20,000/- and Rs. 47,85,500/-including Rs. 7,20,00 of 2015-16 and Rs. 2,88,000 of 2016-17 from MFHLLP during the years 2015-16 and 2016-17 respectively and recorded the same in the P &L Account of the appellant for the said two years. In the notice the advance amount received during the year was proposed to be assessed under Section 4 (7) (a) of the VAT act after allowing standard deduction of 30% read with Rule 17 (h) of the Act and levying tax @14.5% on the balance amount as taxable turnover as the appellant not file Form VAT 250. Appellant has completed only one villa and sold the same for Rs. 7,99,920/-vide invoice no. SCLLP/1/2015-16 dated 19-02-2016 including VAT of Rs. 36,000/-@ 5% to M/s Dr. Tejal Modi & Mr. Soham Modi, Jubilee Hills, Hyderabad as purchaser which is collected and paid along with returns.

Appellant submits that it is the subcontractor to the main contractor i.e. MFHLLP and intended to opt to pay tax under Section 4 (7) (b) of the Act by way of composition @5% on the total amount received or receivable

towards the execution of works contract. In view of payment of tax under this sub-section appellant has charged VAT 5% only on the invoice and paid the same. Appellant has recorded all the purchases and paid tax @5% only on the invoice raised on the sale of villa as intended to pay tax under Section 4 (7) (b) only.

In the assessment order the assessing authority confirmed the proposal of levy of tax on the receipts as per P & L account for the years 2015-16 and 2016-17 after deducting 30% towards standard deduction under Section 4 (7) (a) read with Rule 17 (h) of the Act as the appellant could not file Form VAT 250 for levy of tax under Section 4 (7) (b). Appellant submits that it has maintained all books of account and the turnovers were extracted by the learned DCTO from the P & L account of the appellant. This proves that the appellant has maintained all books of account in which case the learned DCTO ought to have assessed the turnover under Section 4 (7) (a) of the Act by levying tax on the value of goods at the time of incorporation at the rates applicable to the goods under the Act by allowing eligible input tax credit to the extent of 75% of the tax paid on the goods purchased as per Rule 17 (1) (b). Appellant submits that the assessment order passed by the DCTO on standard method under Rule 17 (1) (g) is highly illegal and is therefore liable to be set aside.

In view of the above grounds and other grounds that may be urged at the time of hearing the appellant prays the Appellate Authority to set aside the assessment order as illegal and allow the appeal."

Sri M. Ramachandra Murthy, Advocate 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 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. The assessment of the appellant for the disputed tax periods was completed by the Deputy Commercial Tax Officer, Bowenpally Circle, Hyderabad (hereinafter referred to as the Audit Officer) vide orders dated 08-05-2018 in A.O.No.27156. Aggrieved with the said orders, the appellant preferred an appeal in this office disputing the determination of turnovers on account of execution of works contract and consequential levy of tax thereon. The said appeal was disposed off by me vide appeal orders in Appeal No.BV/86/2018-19 (ADC Order No.2412), dated 28-12-2020 as remanded for passing of fresh orders with the following observations and directions:

"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."

To give effect to the above appeal orders, the Assessing Authority issued notice and on observation that though the reminder notices were issued the appellant failed to file their objections / documentary evidence, the Assessing Authority passed the impugned consequential assessment order confirming the levy of tax as was done in the original assessment order.

The claim of the appellant is that the Assessing Authority is not justified in passing the impugned order confirming the levy of tax as was

done in the original assessment order without providing a reasonable opportunity to the appellant to file their objections along with the relevant documentary as was directed by the Appellate Authority even though there is a sufficient time available to pass the effectual orders. It is further explained that at the time when the notices were issued by the Assessing Authority, the person who is looking after the sales tax matter was not attending the office due to illness which resulted in non-responding to the notices issued and as such the non-responding to the notices issued was neither willful nor deliberate on the part of the appellant but due to the circumstances beyond their control. The Authorised Representative, however, stated that the appellant is now ready to produce the relevant documentary evidence as and when called for and pleaded for an opportunity to do so.

For the reasons discussed above and having regard to the readiness of the appellant to produce the relevant documentary evidence as and when called for, more particularly keeping in view the principles of natural justice, I feel it just and proper to remit the matter back to the Assessing Authority, who shall provide an opportunity to the appellant to file their objections along with relevant documentary evidence, if any, consider and examine the same in the light of the remand directions contained in the appeal order referred to above and pass orders afresh in accordance with the provisions of law, after giving the appellant an opportunity of being heard. With this direction, the impugned order is set-aside on the disputed tax amounting to ₹5,58,808/- and the appeal thereon remanded.

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

Since the main appeal itself is disposed off, the stay petition filed becomes infructuous.


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.