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

PRESENT: SMT. Y. SUNITHA,

ADC Order No.144 Date of hearing:10-01-2023
Appeal No.BV/40/2022-23 Date of order :14-03-2023

1. Name and address of the Appellant.	:	M/s Nilgiri 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.36607622962,dt.13-07-2022 (July, 2015 to June, 2017 / Tax)
4. Date of service of order	:	22-07-2022
5. Date of filing of appeal	:	20-08-2022
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	:	₹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, 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 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-S.D.Road Circle, Hyderabad (hereinafter referred to as the territorial Assessing Authority). The present appeal is filed against the effectual assessment orders dated 13-07-2022 (A.O.No.17546) passed by the Assessing Authority 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 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 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.

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 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 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.

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 @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.

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.

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 inM/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 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.

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, Advocate and Authorised Representative 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 orders.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. The assessment of the appellant for the disputed tax periods was completed by the Commercial Tax Officer, Maredpally Circle, Hyderabad (hereinafter referred to as the Audit Officer) vide orders dated 23-04-2018 in A.O.No.17546. 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/26/2018-19 (ADC Order No.432), dated 27-02-2019 as remanded for passing of fresh orders with the following observations and directions:

> *"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.*
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> *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."

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 ₹1,57,41,135/- 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.