

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

PRESENT SMT. Y. SUNITHA,

ADC Order No.145

Appeal No.BV/41/2022-23

Date of hearing:10-01-2023

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 / Penalty)
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 : -
(b) Amount of tax disputed : -
9. Amount of relief claimed : ₹39,35,284/- (Penalty)
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 penalty orders dated 13-07-2022 (A.O.No.17544) passed by the Assessing Authority for the tax periods from July, 2015 to June, 2017 under the TVAT Act, disputing levy of penalty amounting to ₹39,35,284/-.

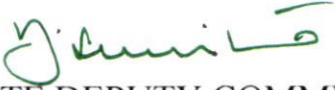
Sri M. Ramachandra Murthy, Chartered Accountant and Authorised Representative of the appellant of the appellant appeared and argued the case. While reiterating the contentions as set-forth in the grounds of appeal, the Authorised Representative argued that when the very tax made by the Assessing Authority is incorrect, the question of levy of penalty does not arise. Hence, the Authorised Representative pleaded for setting-aside of the impugned levy of penalty.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. The appellant, in the grounds of appeal, and his Authorised Representative, raised certain contentions with regard to the merits of the case placing reliance in certain case law. Without going into the admissibility or otherwise of the same, I have to observe that since the appeal filed by the appellant against the assessment to tax based on which the impugned penalty was levied, is disposed off by me as 'remanded' in Appeal No.BV/40/2022-23, dated 14-03-2023, the levy of penalty made by the Assessing Authority also needs re-consideration. In 11-SCC-101 in the case of Pratibha Processors Vs Union of India (SC), their Lordships of the Apex Court observed that "in a fiscal statute, penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of a particular statute". Moreover, the penalty is an appendage of the original orders and its survival depends on the main order that acts as a prop. If the prop is set-aside, the appendage's survival is in question and falls flat. Hence, in fitness of matters, I feel it

just and proper to remit the matter back to the Assessing Authority, who shall pass such orders of penalty as deemed fit and warranted consequent on making of assessment to tax in pursuance of the appeal order as discussed above. With this direction, the impugned orders of penalty are set-aside on a penalty amount of ₹39,35,28409/- 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.