

GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT



Office of the
ASSISTANT COMMISSIONER (ST),
M.G.Road-S.D.Road Circle,
D.No.6-3-789, 4th Floor,
Pavani Prestige Complex,
Near Bus Stop, Main Road,
Ameerpet, Hyderabad – 500 016.

Year / Act : 2017-18/Entry Tax
TIN : 36292192903

Date : 11.09.2023

PRE-REVISION SHOW CAUSE NOTICE

SUB : Telangana Tax on Entry of Goods into Local Areas Act, 2001 (for brevity 'Telangana Entry Tax Act, 2001') – M.G.Road- S.D.Road Circle – Begumpet Division – M/s.Vista Homes, Secunderabad (for brevity 'assessee') - Assessment Order for the year 2017-18 under the Telangana Entry Tax Act, 2001 passed – Assessee preferred an appeal before the ADC(CT), Punjagutta Division, Hyderabad seeking favourable orders – Appeal disposed-off as “Remanded” with certain directions – Examined – Issue of Pre-Revision Show Cause Notice calling for certain required documents / (and/or) written objections – Reg.

- REF : 1.Proceedings of the Assistant Commissioner (ST), M.G.Road-S.D.Road Circle dated 13.07.2022 for the year 2017-18 under the Telangana Entry Tax Act, 2001 (vide A.O.No.17539).
2.Proceedings of the Appellate Deputy Commissioner (CT) [presently re-designated as Appellate Joint Commissioner (ST)], Punjagutta Division, Hyderabad Hyderabad in Appeal No. BV/37 /2022-23, dated 14.03.2023 for the year 2017-18 under the Telangana Entry Tax Act, 2001 (vide ADC Order No.141).

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M/s.Vista Homes, located at Survey No.193 to 195, Vasavi Siva Nagar Road, Bharat Nagar Colony, Kushaiguda, Secunderabad – 500 062 are registered dealers under the provisions of TVAT Act, 2005 and CST Act, 1956 with the TIN 36292192903 and assessee on the rolls of Commercial Tax Officer [presently re-designated as Assistant Commissioner (ST)], M.G.Road-S.D.Road Circle of Begumpet Division, Hyderabad. For the year 2017-18 under the Telangana Entry Tax Act, 2001, the assessee was finally assessed to tax by this tax office vide reference 1st cited, having resulted in raising a demand of

Rs.2,27,750-00 on account of / under a determination that, there is failure of the assessee in paying Entry Tax upon usage of certain notified goods (viz., Cement, Lifts, Elevators and Accessories etc.,) so purchased from interstate parties in construction works.

The assessee having disagreed with the above assessment order appealed to the Appellate Joint Commissioner (ST), Punjagutta Division, Hyderabad seeking certain relief(s) of the pre-determined/assessed turnover(s) or tax(es). The Appellate Authority having examined the contentions raised by the appellant assessee in their grounds of appeal/(and/or) having heard the pleadings of the assessee made during the Personal Hearing /(and/or) having examined the documents/details/statutory forms so adduced against their contentions/ claims, disposed-off the appeal and passed orders vide reference 2nd cited, wherein while "REMANDING" the assessment / appeal back to the assessing authority, issued certain directions. The observation(s) so made and the resultant determinative expressions/ conclusions so arrived-at by issuing certain directions by the appellate authority in the referred appeal order are reproduced as is hereunder as a part of having more relevance and clarity on the impugned subjects/ contentious issues / claims of the assessee and in addition thereto, also in order of processing the consequential action more legitimately, appropriately and reasonably :-

//Sri M. Ramachandra Murthy, Advocate and Authorised Representative of the appellant appeared and argued the case 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 orders. The assessment of the appellant for the disputed tax periods was completed by the Assessing Authority vide orders dated 24-07-2019 in A.O.No.39153 levying tax on the value of goods purchased from outside the State under the Entry Tax on Goods Act involving the disputed tax herein. Aggrieved with the said orders, the appellant preferred an appeal in this office contending that since the goods so purchased were used in the execution of works contract, no levy can be fastened on the value of such goods under the Entry Tax on Goods Act. The said appeal was disposed off by me vide appeal orders in Appeal No.BV/63/2019-20 (ADC Order No.416), dated 27-02-2021 as remanded for passing of fresh orders with the following observations and directions:

"As seen from the above, works contract includes any agreements for carrying out for cash or deferred payment or for any other valuable consideration, the building construction, processing, fabrication, erection etc., of any movable or immovable property. In order to satisfy this definition, it is not just enough if there is an agreement to carry out any of the works mentioned in the said definition, but also such carrying out of the work should be for a cash or deferred payment or for any other valuable consideration.

Thus, assuming that in the disputed transaction undertaken by the appellant even if they had undertaken any execution of works in favour of the land owner, unless the same is for cash or deferred payment or for any other valuable consideration, the same does not satisfy the definition of works contract. There was no monetary consideration flowing from the land owner to the appellant towards execution of works contract. Even if the word "other valuable consideration" as occurring in the definition of "works contract" has to be in monetary form only and not in any other form.

It is settled law that the works contract is a deemed sale and the same is to be treated as on par with a normal sale and consequently the benefits extended to such normal sale is also to be extended to a deemed sale. The Entry Tax on Goods Act provides exemption to the notified goods purchased from inter-state when used for the purpose of re-sale or manufacturing for sale. Similarly, the notified inter-state purchases are used in the deemed sale, the benefit of exemption is also applicable to the deemed sale under Entry Tax on Goods Act. However, this is only applicable to those goods which are transferable in the deemed sale to the extent of builder share, but not on the share which was transferred to the land Owner under the development agreement entered into by the appellant with such land Owner.

Here, it is also to be observed that the goods purchased by the appellant from outside the State against statutory forms and utilized the same in such houses / flats relating to Land Owner share amounts to consumption of such goods by them. Since the houses / flats constructed in the Land Owner share amounts to immovable property owned by the Land Owner and the same neither amounts to works contract nor construction and selling of such houses / flats so as to fall under Section 4(7)(d) of the TVAT Act and even if such houses / flats were sold by the land owner after completion of the same, the same does not amount to goods being immovable property. This view further gain support from the decision rendered by the Honourable Supreme Court in the case of M/s Raheja Development Corporation Vs State of Karnataka (41 STC 298).

As already discussed above, it is a fact that since no sale had taken place between the appellant and the landowner subsequent to the incorporation of the notified goods into this portion and in fact it actually amounts to consumption at the hands of the appellant and is liable for levy of Entry Tax on land owner share. Thus the contention of the appellant that the property so transferred to Land Owner is nothing but a deemed sale and the imported goods used for the purpose of re-sale falls under the ambit of Section 3(2) of the Entry Tax on Goods Act is devoid of merits.

However, as already observed above, since the Assessing Authority has passed the impugned order only in the absence of the appellant filing the objections to the show cause notice issued, I feel it just and proper to remit the matter back to the territorial Assessing Authority, who shall provide an

opportunity to the appellant to file their objections along with documentary evidence if any, consider the same and then pass orders afresh in accordance with the provisions of law, duly bearing in mind my observations made above.

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 ₹2,27,750/- and the appeal thereon remanded.

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

In the light of the observations made and resultant directions issued expressly by the appellate authority in the course of disposing off the appeal as supra, it is as a part of giving consequential effect to the remand directions of the appellate authority in due process of law, the assessee by this proposed or subjected-to Pre-revision Show Cause Notice is hereby directed to produce the following documents/statements/details/statutory forms / evidential case details for the tax periods of 04/2017 to 06/2017 under the Telangana Entry

Tax Act, 2001 for making due and proper examination of the claims of the assessee/issues under dispute with those evidence in an appropriate manner and allow necessary relief to an extent found they are eligible or to an extent found to be capable of being granted necessary relief without prejudice to the generality of the provisions.

- a) A detailed clarificatory statement as regards to the precedents of the case / precedents of the point(s) at issue so under dispute-cum-covered by remand directions of the appellate authority and as well as all the relevant and appropriate corroborative and supporting evidence of the points/issues they objected.
- b) All the relevant Purchase Invoices, Work Orders, Agreement copies, Sale Deeds and Bills.
- c) In addition there-to of the details sought of the issues under dispute, the assessee is further hereby requested to produce the details of tax paid if any during the trial of case before the appellate authority etc.,

Concluding this subjected-to Pre-Revision Show Cause Notice, the assessee M/s.Vista Homes, Secunderabad are hereby requested to produce the above-mentioned documents/statutory forms/information within (15) days from the date of receipt of this Notice; failing which, necessary orders as deemed fit in accordance with the law will be passed without any further notice or communication.

NOTE : The assessee in this juncture is further informed that, if any of the above named documents/statements/statutory forms were already submitted in the tax office in the light of the remand directions of the appellate authority, a copy of acknowledgment of those submission(s) as proof of the submission may please be produced at once before the undersigned which enable this office to verify the same with the office records and allow necessary relief in accordance with law.

To,
M/s.Vista Homes,
located at Survey No.193 to 195,
Vasavi Siva Nagar Road, Bharat Nagar Colony,
Kushaiguda, Secunderabad – 500 062.


ASSISTANT COMMISSIONER (ST),
M.G. ROAD-S.D. ROAD CIRCLE,
M.G. Road-S.D. Road Circle,
Begumpet Division, Hyderabad

For Act 2001 for making due and proper examination of the claims of the assessors/issuers under dispute with those evidence in an appropriate manner and allow necessary relief to an extent found they are eligible or to an extent found to be capable of being granted necessary relief without prejudice to the generality of the provisions.

a) A detailed clarificatory statement as regards to the proceedings of the case / precedents of the point(s) at issue as under dispute covered by the remand directions of the appellate authority and as well as all the relevant and appropriate corroborative and supporting evidence of the points/issues they objected.

b) All the relevant Purchase Invoices, Work Order, Agreement copies, Bills, Orders and Bills.

c) In addition thereto of the details sought of the issues under dispute, the assessor is further hereby requested to produce the details of tax paid if any during the trial of case before the appellate authority etc.

Concluding this subjected to the Revision Show Cause Notice, the assessed M/s Vista Homes, Secunderabad are hereby requested to produce the above mentioned documents/statements/forthcoming within (15) days from the date of receipt of this Notice, failing which necessary orders as deemed fit in accordance with the law will be passed without any further notice or communication.

NOTE: The assessor in this further is further informed that, if any of the above named documents/statements/statements/forms were already submitted in the tax office in the light of the remand directions of the appellate authority, a copy of acknowledgment of those submission(s) as proof of the submission of any phase be produced at once before the undersigned which enable the office to verify the same with the office records and allow necessary relief in accordance with law.

ASSISTANT COMMISSIONER (ST)
TAXATION DEPARTMENT
M.G. Road 2-D, 2nd Floor,
Secunderabad Division, Hyderabad

To,
M/s Vista Homes,
located at Survey No 193 to 195,
Vasanth Nagar Road, Bhanu Nagar Colony,
Kashanpeta, Secunderabad - 500 062