



FORM VAT 305

**GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT**

ASSESSMENT OF VALUE ADDED TAX

[See Rule 25 (5)]

AO No. 25460

01. Tax Office Address:
COMMERCIAL TAX OFFICE
Marredpally Circle
6TH FLOOR, PAVANI PRESTIGE
AMEERPET, HYDERABAD

Date Month Year

23

04

2018

02 TIN: 36607622962

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

Examination of your records by the undersigned on 07.02.2018 against the issue of VAT-304 dated 01.02.2018, the correct amounts of Value Added Tax have not been declared in the VAT returns listed below. Under the provisions of T VAT Act 2005 the following tax amounts are proposed to be assessed for the tax periods shown below:

Year	Particulars	Under declared tax	Total Due to Tax Department
2015-16	Sale of Flats	6423387	6423387
2016-17	Sale of Flats	15523550	15523550
2017-18	Sale of Flats	278100	2781100
	Total		24728037

Explanation:

M/s Nilgiri Estates, Secunderabad, is a registered dealer under VAT and on the rolls of Commercial Tax Officer, M. G. Road Circle. The assessee is doing business in Construction of Flats. They are filing monthly VAT Returns before Commercial Tax Officer, M. G. Road Circle and paying taxes due thereon on. The assessee are doing business with effect from 01.07.2015.

The Deputy Commissioner (CT), Begumpet Division, Hyderabad has issued authorization in Form ADM 1B to conduct audit. Accordingly the undersigned has issued Form VAT 304, dt. 01.02.2018 to produce

the books of accounts for the years 2015-16 (from 01.07.2015) to 2017-18 (upto June' 2017), to verify the genuineness of the record maintained by them with reference to the VAT Returns filed.

The assessee have produced the financial statements for the years 2015-16, 2016-17 and 2017-18 (upto 06/2017)

2015-16 (from 01.07.2015):

Particulars	As per Returns	As per Books of accounts
Exempt Purchases	0	0
Exempt Sales	0	13994267
5% / 14.5 %	0	44319908

2016-17:

Particulars	As per Returns	As per Books of accounts
Exempt Purchases	0	0
Exempt Sales	37650000	45882415
5% / 14.5%	12550000	101058967
Tax payable	627500	15523550
Tax paid	110625	110625

2017-18 (upto 06/2017):

Particulars	As per Returns	As per Books of accounts
Exempt Purchases	0	0
Exempt Sales	23006250	8220000
5% / 14.5%	7668770	19180000
Tax payable	383439	2781100
Tax paid	383439	383439

The dealer is executing works contract in the nature of construction of Residential Apartments by entering in to a sale agreement for the total sale consideration. Subsequently they are executing the Sale Deed and Agreement of Construction. Hence, the dealer is paying tax on the 25% of the value of sale deeds along with value of respective additional works executed @ 5%.

Apart from the above, it is observed that as per Sec.4(7)(d) of the TVAT Act. Every dealer engaged in construction and selling of residential apartments, houses, buildings or commercial complexes may, in lieu of the amount of tax payable by him under clause (a) opt to pay tax by way of composition at the rate of 5% on twenty five percent of amount received or receivable towards the composite value of both land and building or the market value fixed therefore for the purpose of stamp duty, whichever is higher. As per G.O. Ms. No. 124, Revenue (CT-II) Dept., dt: 30.06.2017, The Rule 17(4) was amended, omitting clauses (e) and (i). This implies that the dealers are liable to pay tax on the consideration received.

As the assessee company has not opted to pay tax under composition by filing Form VAT 250, as per Rule 17 (2) (b), 17 (3) (c), 17 (4) (b) and 19 (5) of the TVAT Act. In the absence of the detailed books of accounts the assessee have been assessed to tax by allowing standard deductions under section 4 (7) (a) read with Rule 17 (1) (g).

Excerpts of Sec 4 (7) (a):

(7) Notwithstanding anything contained in the Act;-

a) Every dealer executing works contracts 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 12.5% / 14.5% on the total consideration received or receivable subject to such deductions as may be prescribed.

Authorization for assessment:

The DC (CT), Begumpet Division, as authorized to assess the dealer vide ADM 1 C No. 2018030605803245189802, Dt. 06.03.2018.

Total Tax payable	-	Rs. 24728037-00
Tax Paid along with return	-	Rs. 494064-00
Balance payable	-	Rs. 24233973-00

Tax payable by the Dealer to the Department Rs. 24233973-00

Accordingly a show cause in Form VAT 305 A dt. 07.03.2018 was issued and served on the dealer on 08.03.2018 asking the dealer to file their objections if any in written (7) days along with documentary evidence. In reply to the show cause notice, the dealer filed a letter dt. 13.03.2018, stating that they have referred the matter to their sales tax consultant and their M.D. was out of country and will be returned on 25.03.2018 and hence requested to grant 30 days time to file their reply. Accordingly the dealer was sanctioned time upto 26.03.2018. But even after 26.03.2018 the dealer did not file any reply.

Hence, a personal hearing notice dt. 03.04.2018 was issued to the dealer to appear for personal hearing on 06.04.2018.

In reply to the notice, the dealer filed reply stating the following objections:

"We are registered VAT dealer on the rolls of the CTO, MG Road Circle, Hyderabad. We have commenced business with effect from 01.07.2015. We are engaged in the business of constructing and selling villas. It has been observed in the notice that we have not opted to pay tax under composition scheme and that therefore we have to pay tax under Section 4(7) (a) of the Act read with Rule 17(1)(g) of the VAT Rules. G.O. Ms. No. 124 Revenue dated 30.06.2017 has also been mentioned by stating that we have to pay tax on the consideration received. Accordingly tax of Rs. 2,47,28,037-00 has been proposed to be levied.

At the outset we submit that computation for arriving at the above tax due has not been mentioned in the notice. Be that as it may, we submit that at the time of commencement of business, we had 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 and we are not able to trace the acknowledged copy due to the concerned Accounts employees leaving the firm. In support of this averment, we submit that we had not claimed any Input Tax Credit in the returns filed by us. We have paid VAT @ 1.25% at the time of registration of villas. These two points speak to the fact that we had opted for composition under Section 4 (7) (d) of the Act. Hence it is not correct to state that we had not opted for composition. During the period of assessment we sold and registered the villas. The following is the sale consideration received by us on such registration.

2015-16	Rs. Nil
2016-17	Rs. 5,00,50,000-00
2017-18 (upto 30.06.2017)"	Rs. 2,74,00,000-00
Total	Rs. 7,74,50,000-00

We have paid VAT of Rs. 9,70,001-00 and not Rs. 4,94,064-00 mentioned in the notice.

During the assessment period, we have received the following revenue, including the above amounts:-

2015-16	Rs. 8,64,99,344-00
2016-17	Rs. 15,13,45,014-00
2017-18 (upto 30.06.2017)"	Rs. 3,54,78,359-00
Total	Rs. 27,33,22,717-00

During the assessment period, we have received the following revenue, including the above amounts. Constructions works not yet started.

2016-17	Rs. 8,16,85,503-00
2017-18 (upto 30.06.2017)	Rs. 3,13,23,052-00
Total	Rs. 11,30,00,555-00

Without prejudice to the above we submit that we have maintained detailed accounts and all kinds of required information could be easily culled out from the books of account. In the event of levy of tax under Section 4(7)(a) of the Act, we shall automatically become eligible for Input Tax Credit. This is submitted only as an alternative contention, as we have filed Form VAT 250.

We request to kindly consider these objections and drop the proposed levy. We also request to afford us an opportunity of personal hearing before conclusion of the proceedings”.

Reply to the objections:

In the reply filed by the dealer, the dealer stated that, they have filed manually VAT 250 and copy of which is not traceable. Further they have stated that, they have paid tax @ 1.25% on consideration received and not taken ITC, these two points speaks the fact that they had opted for composition. The dealers contention are rejected for the following reasons:

- a) The dealers are registered w.e.f. 01.07.2015 under TVAT Act' 2005. Since 2012 onwards filing of Form VAT 250 electronically in VATIS portal was implemented. So all the dealers are filing their Form VAT 250 through VATIS only i.e., Online.
- b) Even though if it is treated that the dealer is ignorant of this fact, they must produce the copy of VAT 250 which has claimed by them that they filed manually, but the dealers failed to do so.

Hence it is treated that they have not opted for composition under Sec 4(7)(d) simply paying tax @ 1.25% and not taking ITC does not prove that they opted for composition. Sec. 4 (7) (d) clearly says that to pay tax @ 5% on 25% of the amount received the dealer shall opt to pay tax under composition.

In view of the above the dealers contentions are not considered. Hence the tax is calculated under Sec 4(7)(a). Further the dealers not produced any books of account. Hence, in the absence of the books of account tax is calculated under Rule 17(1)(g) by giving standard eligible deductions.

Further the dealer in their reply stated that Rs. 11,30,00,555-00 was received as advances and construction work was not yet started. Hence, this turnover is deleted from the VAT Assessment which will be assessed under GST Act' 2017. The dealer was also granted personal hearing Sri Jayaprakash, Manager (Finance Acts) of the assessee company appeared for personal hearing on 06.04.2018 and stated the same facts which were already replied in the above paras.

Therefore the assessment for the period July' 2015 to June' 2017 is completed as under:

Total Turnover (July' 2015 to June' 2017)	Rs. 27,33,22,717-00
Delete Turnover will be assessed under GST	Rs. 11,30,00,555-00
Turnover assessed under T VAT	Rs. 16,03,22,162-00
Standard Deduction @ 30% as per Rule 17(1)(g)	Rs. 4,80,96,649-00
Taxable Turnover	Rs. 11,22,25,513-00
Tax @ 14.5%	Rs. 1,62,72,699-00
Tax paid	Rs. 5,31,564-00
Balance payable	Rs. 1,57,41,135-00

The assessee have stated that they have made payments to a tune of Rs. 9,70,001-00 but failed to file challan copies inspite of repeated telephonic messages. Hence, tax payment as per VATIS is considered.

In view of the above orders are passed and tax payable by the dealer to the department is **Rs. 1,57,41,135-00**

Note: An appeal against this order lies before the Appellate Dy. Commissioner (CT), Punjagutta Division within (30) days of receipt of this order.


Commercial Tax Officer,
Marredpally Circle.

To,
M/s Nilgiri Estates,
5-4-187, 3&4, 2nd Floor, Soham Mansion,
M.G.Road, Secunderabad.