

GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT

PROCEEDINGS OF THE ASSISTANT COMMISSIONER (ST), M.G.ROAD-S.D.ROAD
CIRCLE, BEGUMPET DIVISION, HYDERABAD.
PRESENT Sri B.UPENDER REDDDY

AO:224

Tax Periods/Act:- 04/2015 to 06/2017 (VAT)

TIN : 36547131584

Date:-20.02.2024

REVISED ASSESSMENT ORDER

SUB:-VAT Act, 2005 - M.G.Road-S.D.Road Circle - Begumpet Division, Hyderabad - M/s.Paramount Builders, Hyderabad (for brevity here-in-after referred to in as 'assessee') - VAT Audit-cum- Assessment for the tax periods of 04/2015 to 06/2017 conducted and completed by the STO-1, M.G.Road-S.D.Road Circle in the form of passing an Assessment Order in Form VAT-305 - Assessee preferred an appeal before the ADC (CT), Punjagutta Division, Hyderabad [for brevity here-in-after referred to in as 'appellate authority'] seeking certain relief(s) of the turnover(s) or tax(es) pre-determined/pre-assessed- Appeal disposed-off as "Remanded" back to the assessing authority with certain conclusive observations and subsequent directions - Examination made of the Appeal Order - Pre-revision Show Cause Notice issued calling for certain details/ documents/ statements - Assessee filed reply - Examined - Revised Assessment Order Passed - Reg.

- REF:-1.Proceedings of the State Tax Officer-1, M.G.Road-S.D.Road Circle in Form VAT-305 dated 05.12.2019 for the tax periods of 04/2015 to 06/2017 under TVAT Act, 2005 vide A.O.No.47012.
- 2.Proceedings of the Appellate Deputy Commissioner (CT) [Presently re-designated as Appellate Joint Commissioner (ST)], Punjagutta Division, Hyderabad in Appeal No.BV/103/2019-20, dated 21.02.2022 for the tax periods of 04/2015 to 06/2017 under VAT Act, 2005 vide ADC Order No.224.
- 3.This tax office's Pre-revision Show Cause Notice dt. 11.092023 for the tax periods of 04/2015 to 06/2017 under TVAT Act, 2005.

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M/s.Paramount Builders, located at H.No.5-4-187/344, 2nd Floor, Soham Mansion, Mahatma Gandhi Road, Secunderabad - 500 003 are registered dealers under the provisions of TVAT Act, 2005 and CST Act, 1956 with the TIN 36547131584 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 tax periods of 04/2015 to 06/2017 under the TVAT Act, 2005, the assessee was conducted Audit/ Scrutiny of their books of accounts and VAT records by the State Tax Officer-1, M.G.Road-S.D.Road Circle and in the course of making verification of the VAT records/books of accounts of the assessee with that of the turnovers reported to the department for the purpose of ascertaining/evaluating the correctness and completeness of the turnovers reported by the assessee, they were passed an Assessment Order in Form VAT-305 vide reference 1st cited, with the following determinations.

A) Short payment of tax - Rs.71,774-00

2015-16	Rs. 1999-00
2016-17	Rs.69775-00

Rs.71774-00

2015-16	Output tax on Rs.15401040	Rs.192513
	Less : Tax paid	Rs.190514
	Balance	Rs.1999

2016-17

Output tax on Rs.7782000
Less : Tax paid
Balance

Rs.97275
Rs.27500
Rs.69775

B) Tax on under declared turnover – Rs.57131-00 (on the turnover variation between the receipts declared in Profit and Loss Account and receipts reported in Form VAT-200 Returns).

2016-17

Rs.57131-00

C) Tax on differential turnover arrived at w.r.t. agreement sale turnover – Rs.81103-00

2015-16

Rs.34781-00

2016-17

Rs.46322-00

Rs.81103-00

Sl.No.	Period	Sale Deed value	Estimated Agreement of sale value (adding 30% value on Sale Deed value	Difference turnover arrived	Tax levied @ 5% on 25% difference turnover
1	2015-16	9275000	12057500	2782500	34781
2	2016-17	12352500	16058250	3705750	46322
3	2017-18	0	0	0	0
TOTAL		21627500	28115750	6488250	81103

Total under-declared tax determined:-

- | | | |
|------|---|--------------|
| i) | Short payment of tax | Rs. 71774-00 |
| ii) | Tax on under-declared turnover | Rs. 57131-00 |
| iii) | Tax on differential turnover arrived with reference to agreement of sale turnover | Rs. 81103-00 |

Total Rs.210008-00

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 re-produced 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, Chartered Accountant 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 order.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. In the impugned orders, at the pre-assessment stage, the Audit Officer observed that on verification of the records and documentary evidenced by the appellant, it was noticed that there is a difference in the turnovers on which the appellant had paid tax at 5% under composition when compared such turnovers with the construction account receipts as per Profit & Loss Account. The appellant filed their objections. However, on an observation that the

appellant had filed the documentary evidence on sample basis instead of in entirety, the Audit Officer not only confirmed the proposed levy of tax on account of differential turnovers but also estimated the sale deed value by adding 30% value on such sale deed value and arrived at the differential turnovers and levied tax thereon at 5%. The Audit Officer also levied tax on the consideration received by the appellant stated to be relatable to sale of villas / flats after obtaining the Occupation Certificate and as such the same amounts sale of immovable properties on the ground that the Occupancy Certificate furnished by the appellant was not issued by the competent authority by treating the same as invalid. The Audit Officer also brought to tax certain of the tax amount towards short payment.

Such levy is assailed by the appellant stating that the turnovers reflected in the Profit & Loss Account are different from the actual sale turnovers reported in the monthly returns in as much as the turnovers reflected in the Profit & Loss account are for the purpose of Income Tax whereas the turnovers declared in the VAT returns are actual sale turnovers which are liable to tax under the TVAT Act and though these facts were brought to the notice, the Audit Officer failed to consider the same properly. It is also stated that if the Audit Officer desires the documentary evidence in entirety, nothing prevented it to direct the appellant to produce the same which the Audit Officer failed to do so which resulted in the appellant preventing from the same. The appellant now furnished the documentary evidence like copies of sale deeds etc., and expressed their readiness to produce the same as and when called for. Thus, this issue warrants examination at the Assessing Authority's end.

It is further stated that the Audit Officer is not justified in treating the Occupancy Certificate produced by the appellant as invalid in as much as such certificate issued by the Gram Panchayat Secretary and the Gram Panchayat is a local body and as such the said certificate is valid one. It is further stated that even if the Audit Officer had any doubts about the said certificate, necessary enquiries would have been made necessary enquiries with the Gram Panchayat so as to ascertain the factual situation. It is also stated that had the Audit Officer provided reasonable opportunity, the appellant would have explained the same since no such proposal was made in the show cause notice issued. This claim also needs examination at the Assessing Authority's end.

It is also stated that the Audit Officer is not justified in observing that there is a short payment of tax disregarding the fact that the appellant had already discharged their tax liability in entirety and had the Audit Officer examined the same properly, there is no such short payment would arise.

For the reasons discussed above, I feel it just and proper to remit the matter back to the territorial Assessing Authority, who shall cause examination of the issues involved herein with reference to the material already available on record with that of the 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. With this direction, the impugned order is set-aside on the disputed tax amounting to ₹2,10,008/- 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 / evidential case details for the tax periods of 04/2013 to 06/2017 under VAT Act, 2005 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) 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/Hon'ble High Court of Judicature etc.,

NOTE: The assessee in this juncture is further informed that, if any of the above named documents/statements 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.

Accordingly a Pre-revision Show Cause Notice dated:-11.09.2023 for the tax periods of 04/2015 to 06/2017 under TVAT Act, 2005 as a part of taking consequential action against the remand directions of the Appellate Authority in due process of law was issued vide reference 3rd cited, duly calling upon to produce certain documents / statements for the purpose of making due examination of the same with the issues/claims so under dispute-cum-so covered by remand directions of the Appellate Authority and allow necessary relief to an extent found that they are eligible or entitle for in accordance with law and complete the re-assessment proceedings. The Notice was served by hand/in person on 13.09.2023.

In response, the assessee neither filed reply with necessary documents nor sought any adjournment of the time allowed. Hence, keeping in view the principles of natural justice, the assessee has been issued a "Final Opportunity Notice" dated 05.10.2023 with a direction to file their written objections along with necessary documentary evidence for making due verification of the same and allow necessary relief. The same was served on the taxpayer in the form of personal service/by hand on 05.10.2023.

But, the assessee having received the above Notice also failed to take advantage of the opportunity given in this form. In this circumstances, while keeping in view the legitimate limits of the process of concluding the subjected-to revised assessment proceedings and keeping in view of constitutional standard that it would be fair/lawful to conclude the giving compliance of remand directions of the appellate authority only after giving due/reasonable opportunities to the assessee as far as possible, the assessee has been issued a "Notice of Opportunity-cum-Personal Hearing" dated 31.10.2023 wherein on the one hand while giving an opportunity of filing their objections and producing sufficient documentary evidence in support thereof by 22.11.2023 and on the other hand while affording/providing an opportunity for them of appearing either in person or through any authorized representative with all the connected records and documents in the tax office on the scheduled date of 22.11.2023 in order of substantiating their claims so put-forth before the appellate authority and make their arguments/case heard under a definite condition that, in case of failure to avail/to take advantage of this opportunity given, action as deemed fit in accordance with the law will be taken to complete the process of consequential action on merits without any further notice or communication in this matter. The Notice was served on the assessee on 06.11.2023.

But, the assessee refrained to utilize the advantage of this opportunity too/as well. Hence, it is hereby opined in subject to the maxims in law and licitly adjudicable canons that concluding the process of Revised Assessment Proceedings /or concluding the process of giving consequential effect to the orders of the appellate authority by making confirm the original proceedings would not amount in against or beyond the principles and scope of reasonable adjudication.

In the light of the above order of determination, it is in the event of further review made of the assessment records of the assessee as appropriate, it is noticed the following facts :

In recognition of the fact that the appellate authority has remanded back their appeal/case to the assessing authority, the then assessing authority has issued several notices to the assessee to produce the relevant records and documents. To briefly mention the details of those dates here they are one on dated 20.07.2022 in the form of general notice which was served on 22.07.2022 by registered post and as well as served by way of sending to their registered e-Mail ID (info@modiproperties.com) on 20.07.2022 and another on dated 12.11.2022 in the form of issuing Show Cause

Notice which was served on the assessee on registered post and as well as sent to the registered e-Mail of the assessee on 12.11.2022. Also it has been sent a Notice of Personal Hearing on 01.12.2022 with a request to attend in person with all the connected documents before the undersigned on 08.12.2022. The Notice was served on the assessee by registered post and as well as the notice was also served on the assessee by way of sending to the registered e-Mail of the assessee on 01.12.2022.

In response to the above Notices, the assessee has filed a reply on 28.07.2022 seeking thirty days' time. They also filed another reply on 05.09.2022 seeking fifteen days' time. Later-on, the assessee filed a reply on 08.12.2022 wherein the assessee while copying the same grounds of appeal so adduced before the appellate authority duly expressing their disagreements and requested to quash and set-aside the order under dispute. Except this, they have failed to present the facts and circumstances and precedents of their disagreeing of the pre-assessed things and relevant evidence to prove their claims. Despite being given so many opportunities in various forms, the assessee failed to respond properly and submit the required records.

When we look at the order of the case described above (i.e., at the time of the then assessing authority), it is hereby considered that, there is no need to revise the order of assessment of tax so determined supra.

In view of the above facts and circumstances, the revised assessment of the assessee as a part of giving due compliance to the remand directions of the appellate authority for the tax periods of 04/2015 to 06/2017 under TVAT Act, 2005 is accordingly completed and the amount of tax payable is re-casted as under :

Amount of tax under dispute	Rs.2,10,008-00
Less : Amount of tax being given relief	Rs. Nil
Amount of tax resulted as net due	Rs.2,10,008-00
Less : Amount of tax paid during the appeal towards 12.5% of the disputed tax vide Challan No.2000015401,dt:-7.01.2020	Rs. 26,251-00
Net balance resulted as due to the dept.,	Rs.1,83,757-00

NOTE : An appeal against this order lies before the Appellate Joint Commissioner (ST), Punjagutta Division, Hyderabad within (30) days from the date of receipt of this Order.


ASSISTANT COMMISSIONER (ST),
M.G.ROAD-S.D.ROAD CIRCLE.

Assistant Commissioner (ST),
M.G. Road-S.D. Road Circle,
Begumpet Division, Hyderabad

To,
M/s.Paramount Builders,
located at H.No.5-4-187/344, 2nd Floor,
Soham Mansion, Mahatma Gandhi Road,
Secunderabad – 500 003.

Copy submitted to the Joint Commissioner (ST), Begumpet Division, Hyderabad.

BY. REGD. POST A/D

ON IGS ONLY



To

M/S PARAMOUNT BUILDERS
LOCATED AT H.NO 5-4-187/344 2ND FLOOR
SOHAM MANSION MAHATMA GANDHI ROAD
SECUNDERABAD
500003

From Office of the
Assistant Commissioner (ST)
M.G. Road-S.D. Road Circle,
6-3-789, 4th Floor, Pavani Prestige,
R.S. Bro's Complex, Ameerpet,
Hyderabad-500 016.



Del PO:Gathvamangalam 90/4394012

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To: Hub
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