

GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT

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

AO-255
Tax Periods/Act:-04/2015 to 06/2017(VAT)
TIN:- 36570317033

Date:-24.02.2024

REVISED ASSESSMENT ORDER

SUB:-VAT Act, 2005 - M.G.Road-S.D.Road Circle - Begumpet Division, Hyderabad - M/s.Serene Constructions LLP, Secunderabad - VAT Audit-cum-Assessment for the tax periods of 04/2015 to 06/2017 conducted and completed by the AC(ST), M.G.Road-S.D.Road Circle in the form of passing an Assessment Order in Form VAT-305 - Assesses 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 - Assesses not responded - Revised Assessment Order passed - Reg.

REF:-1.Proceedings of the Assistant Commissioner (ST), M.G.Road- S.D.Road Circle in Form VAT-305 dated 13.07.2022 for the tax periods of 04/2015 to 06/2017 under TVAT Act, 2005 vide A.O.No.17545.
2.Proceedings of the Appellate Deputy Commissioner (CT) [Presently re-designated as Appellate Joint Commissioner (ST)], Punjagutta Division, Hyderabad in Appeal No.BV/38/2022-23, dated 14.03.2023 for the tax periods of 04/2015 to 06/2017 under VAT Act, 2005 vide ADC Order No.142.
3.This tax office's Pre-revision Show Cause Notice dt.11.09.2023 for the tax periods of 04/2015 to 06/2017 under TVAT Act, 2017.

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M/s.Serene Constructions LLP, located at H.No.5-4-187/3 & 4, 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 36570317033 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 Assistant Commissioner (ST), 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.

2015-16

The dealer did not filed Form VAT 250. Hence assessed the dealer under Section 4(7)(a) of the TS VAT Act by levying tax on value of goods at the time of incorporation as specified in Schedule V @ 14.5% on total consideration received subject to such deduction as may be prescribed Rule 17 (h) of TS VAT Rules. (Standard Deduction)

Total Receipts as per P & L accounts	Rs.7,20,000-00
Less: Admissible Standard deductions	Rs.2,16,000-00
@ 30 % Of gross receipts.	-----
Taxable turnover	Rs.5,04,000-00

Tax levied on Rs. 5,04,000 =00 @ 14.5%	Rs. 73,080-00
Tax Paid along with monthly VAT returns	Rs. 0-00
Balance to be paid	<u>Rs. 73,080-00</u>

2016-17

The dealer did not filed Form VAT 250. Hence assessed the dealer under Section 4(7)(a) of the TS VAT Act by levying tax on value of goods at the time of incorporation as specified in Schedule V @ 14.5% on total consideration received subject to such deduction as may be prescribed Rule 17 (h) of TS VAT Rules. (Standard Deduction)

Total Receipts as per P & L accounts	Rs.47,85,500-00
Less: Admissible Standard deductions	Rs.14,35,650-00
@ 30 % Of gross receipts.	-----
Taxable turnover	<u>Rs.33,49,850-00</u>

Tax levied on Rs. 33,49,850 =00 @ 14.5%	Rs. 4,85,728-00
Tax Paid along with monthly VAT returns	Rs. 0-00
Balance to be paid	<u>Rs 4,85,728-00</u>

In view of the above findings the final year wise tax liability is worked out as under:

Sl. No.	Year	Tax under declared
1	2015-16	73,080=00
2	2016-17	4,85,728=00
	Total	5,58,808=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, Advocate and Authorised Representative of the appellant 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 order. The assessment of the appellant for the disputed tax periods was completed by the Deputy Commercial Tax Officer, Bowenpally Circle, Hyderabad (hereinafter referred to as the Audit Officer) vide orders dated 08-05-2018 in A.O.No.27156. 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/86/2018-19 (ADC Order No.2412), dated 28-12-2020 as remanded for passing of fresh orders with the following observations and directions:

"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, besides eligible for input tax credit at / 75%. However, the proviso appended to the above clause prescribes that where a dealer did not maintain the accounts so as to ascertain the value of goods at the time of incorporation into the works, such dealer has to pay tax at the rate of 14.5% 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.

In the case on hand, the claim of the appellant is that since they are maintaining the accounts wherefrom the value of goods at the time of incorporation into the works and the labour & services are very much ascertainable, they are eligible to pay tax as per Rule 17(1)(e) of the APVAT Rules. The appellant also expressed their readiness to produce the books of account along with other relevant documentary evidence as and when called for and pleaded for an opportunity to do so.

In the facts and circumstances of the case, I feel it just and proper to remit the matter back to the territorial Assessing Authority, who shall cause verification of the claim of the appellant with reference to the books of account and other relevant records / 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."

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 ₹5,58,808/- 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 04/2015 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 VAT Act, 2005 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 statutory forms / 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 way of in person/by hand 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 assessee in the form of personal service/by hand on 05.10.2023.

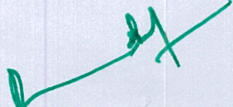
But, the assessee having received the above Notice also failed to take advantage of the opportunity given in this form. In this circumstances, while keeping in view the legitimate limits of the process of concluding the subjected-to revised assessment proceedings and keeping in view of constitutional 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 23.11.2023 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 23.11.2023 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 in the form of personal service/by hand on 16.11.2023. The assessee having received the Notice's more penchanted in showing negligent and apathetic tendency in properly responding to the Notice.

In view of the factual contextuality and circumstantiality of the case, 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.

Accordingly, 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 VAT Act, 2005 is completed and the amount of tax payable is re-casted as under:

Amount of tax under dispute by the assessee	Rs.5,58,808-00
Amount of tax covered by remand directions of the appellate authority, Punjagutta Divn.,	Rs.5,58,808-00
Less: Amount of tax being given relief	Rs. ---Nil---
Amount of tax resulted as net due	Rs.5,58,808-00
Less: Less:- Amount of tax paid during the appeal towards 12.5% of the disputed tax vide Challan No. 1800395406, dated:-15.06.2018 for Rs.63,601/- & Ch.No.1900177060,dated:-22.03.2019 for Rs.54,041/- out of which Rs.69,851-00 @12.5% is allowed for credit at this juncture.	Rs. 69,851-00
Net balance resulted as due to the dept.,	Rs.4,88,957-00

The assessee shall pay above tax for an amount of **Rs.4,88,957-00** for tax period from **04/2015 to 06-2017** within (15) days of receipt of this order. Failure to make the payment will result in recovery proceedings under the AP VAT Act 2005.


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

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.

To,
M/s.Serene Constructions LLP,
located at H.No.5-4-187/3 & 4,
Soham Mansion, Mahatma Gandhi Road,
Secunderabad – 500 003.

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

