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 : 36607622962

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.Nilgiri Estates, 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.17541).
2.Proceedings of the Appellate Deputy Commissioner (CT) [presently re-designated as Appellate Joint Commissioner (ST)]. Punjagutta Division, Hyderabad Hyderabad in Appeal No.BV/ 39/2022-23, dated 14.03.2023 for the year 2017-18 under the Telangana Entry Tax Act, 2001 (vide ADC Order No.143).

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M/s.Nilgiri Estates, located at H.No.5-4-187-3 and 4, 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 36607622962 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.1,76,588-00

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 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 appeared and argued the case reiterating the contentions as set-forth in the grounds of appeal and pleaded for setting-aside of the impugned orders.

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 25-07-2019 in A.O.No.39341 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/64/2019-20 (ADC Order No.417), dated 27-02-2021 as remanded for passing of fresh orders with the following observations and directions:

"From the above provisions, it can be seen that as per clause (a) of sub-section (1), tax is to be levied and collected on entry of the notified goods into any local area for sale, consumption or use therein on the goods and rates that will be notified by the Government. As per sub-section (2), no tax is to be levied on the goods imported by a dealer registered under the VAT Act who brings such goods

into the local area for the purpose of re-sale or using them as inputs for manufacture of other goods in the Sate or during the course of inter-State trade or commerce.

Here, it also necessary to take note of the circular issued by the Commissioner of Commercial Taxes in ref No. CCT's Ref.No.AI (3)/911/2005- dated 23-01-2006, wherein it was clarified and instructed that all the notified goods, imported by the dealers, registered under APVAT Act, from outside the state for the purpose of resale as well as for the purpose of using them as inputs for manufacture of other goods in the State are not liable tax under the Entry Tax on Goods Act.

Now the only issue that needs to be decided is whether there is a resale of goods when goods are used as inputs in execution of works contract or not? Not only the definition of "Sale" as contained in sub-section (28) of Section 2 of the TVAT Act takes within ambit a deemed sale within its ambit, but also it is a settled law that deemed sale is also to be treated on par with a normal sale since in both of them, there is a transfer of property in goods from one person to another. This view of deemed sale is also to be treated on par with a normal sale is further fortified by the decision rendered by the Honourable Supreme Court in the case of M/s Builders Association of India & Others Vs Union of India & Others (73 STC 370), as relied upon by the Authorised Representative, during the course of personal hearing. In the said decision, while examining the constitutional validity of the provisions relating to levy of tax on the transaction of works contract (deemed sale), as to the treatment of deemed sale on par with a normal sale, the Honourable Supreme Court observed and held as under:

"If the power to tax a sale in an ordinary sense is subject to certain conditions and restrictions imposed by the Constitution, the power to tax a transaction which is deemed to be a sale under article 366(29-A) of the Constitution should also be subject to the same restrictions and conditions. Ordinarily unless there is a contract to the contrary in the case of a works contract the property in the goods used in the construction of a building passes to the owner of the land on which the building is constructed, when the goods or materials used are incorporated in the building. The contractor becomes liable to pay the sales tax ordinarily when the goods or materials are so used in the construction of the building and it is not necessary to wait till the final bill is prepared for the entire work.

It is not correct to say that the properties that are transferred to the owner in the execution of a works contract are not the goods involved in the execution of

the works contract, but a conglomerate, that is the entire building that is actually constructed. The Forty-sixth Amendment does not more than making it possible for the States to levy sales tax on the price of goods and materials used in works contract as if there was a sale of such goods and materials. Sub-clause (b) of article 366(29-A) should not be read as being equivalent to a separate entry in List II of the Seventh Schedule to the Constitution enabling the States to levy tax on sales and purchases independent of entry 54 thereof. As the Constitution exists today the power of the States to levy taxes on sales and purchases of goods including the "deemed" sales and purchases of goods under clause (29-A) of article 366 is to be found only in entry 54 and not outside it.

What follows from the above observations of the Honourable Supreme Court is that restrictions and conditions apply to the normal sale shall also be applicable to the deemed sale.

Here, it is also relevant to refer to the circular issued by the Commissioner of Commercial Taxes, Hyderabad in CCT's Ref.No.AI(31)/2089/2002, dated 17-08-2002 on a representation with regard to Entry Tax on Bitumen filed by M/s Indian Oil Corporation, it was clarified as under:

"With reference to your letter cited, it is to inform that if the Bitumen brought is sold or used in Works Contract, no tax is payable."

In the light of the discussion made above, it is to be concluded that if the goods imported from outside the State are used in execution of works contract, there is a deemed sale and in such a case, no tax can be levied under sub-section (1) of Section 3 of the Entry Tax on Goods Act.

As seen from a copy of assessment order passed under the TVAT Act in A.O.No.5460, dated 23-04-2018 now produced, it is seen that the assessment of the appellant for the tax periods from July, 2015 to Jun2, 2017 (including the disputed tax periods in the present appeal i.e., from April, 2017 to June, 2017) was completed by the Commercial Tax Officer, Maredpally circle, Hyderabad (for short – Audit Officer) on the authorization issued by the Deputy Commissioner(CT), Begumpet Division, Hyderabad. While doing so, the Audit Officer while rejecting the claim of the appellant that their turnovers to be assessed under Section 4(7)(d) of the TVAT Act on the ground that the appellant had not opted to pay tax under composition by filing Form VAT 250, determined the turnovers of the appellant under Section 4(7)(a) of the TVAT Act read with Rule 17(1)(g) of the TVAT Rules by allowing a standard deduction at 30% towards

labour and services and levied tax on remaining 70% of the total contractual receipts. Thus, the claim of the appellant that they are doing business as a works contractor is found to be reasonable.

However, as already observed above, since the Assessing Authority has passed the impugned order confirming the proposed levy of tax made in the show cause notice only on the ground that the appellant had not filed any documentary evidence, I find the matter herein requires verification at the Assessing Authority's end.

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 claims made by the appellant with reference to the relevant documentary evidence that were already available on record or that would be produced by the appellant and pass such orders as deemed fit in accordance with the provisions of law, duly bearing in mind my observations made as well as the judge made law, referred to above, after affording a reasonable opportunity to the appellant to present its 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 ₹1,76,588/- 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 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.

Concluding this subjected-to Pre-Revision Show Cause Notice, the assessee M/s.Nilgiri Estates, 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.

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.Nilgiri Estates,
located at H.No.5-4-187-3 and 4,
2nd Floor, Soham Mansion,
Mahatma Gandhi Road,
Secunderabad – 500 003.