

Date: 23-07-2019

From,
M/S. Vista Homes,
5/4/187/3, Soham Mansion,
M.G Road, Secunderabad,
Hyderabad.

To,
The Commercial Tax officer,
M.G Road -S.D Road Circle,
Begumpet Division,
Ameerpet, Hyderabad.

Sir,

Ref: Entry Tax notice dated 29.06.2019

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We submit that we are in receipt of the show cause notice dated 29.06.2019 issued under the provisions of the Telangana Tax on Entry of Goods into Local Areas Act, 2001 (for short Act) for the year 2017-18(Apr-Jun) proposing to levy entry tax of **Rs.227,750/-**. It is mentioned in the notice that the Act envisages levy of entry tax on import of notified goods into the state of Telangana for consumption, that the Hon'ble Supreme court of India has upheld the provisions of the Act in the batch cases of M/s Rayalaseema Alkalies and allied chemicals Ltd and others (CA No's 8053-8077) and that therefore entry tax is liable to be paid on notified goods imported into the State of Telangana.

It has been further stated in the notice that the examination of data and records available in the VATIS system of CT Department revealed that we have imported notified goods into this State by issuing statutory forms, that exemption from payment of entry tax is available only when the notified goods are resold or used as inputs in manufacture and that as seen from the nature of our business and the commodity imported, it is opined that the commodities in the annexure are consumed by us. Hence it is concluded that we are liable to pay entry tax. The commodities stated to be purchased during the year are **1. Cement and 2. Ceramic tiles and Glazed tiles and Earthen tiles** as per the notice. We request to kindly consider our objections on the following grounds:-

We submit that tax is leviable under the Act only on the notified goods. It is observed from the notice that tax has also been proposed to be levied on ceramic tiles and earthen tiles, which are not notified.

Ceramic tiles and Glazed tiles and Earthen tiles:- 'Ceramic tiles and Glazed tiles and Earthen tiles' have not been notified by the Government under the Entry Tax Act. There is no GO, that is available as per our knowledge allowing levy of entry tax on above tiles. In fact no Notification with number and date has been mentioned in the notice, though burden lies on the assessing authority for that purpose. GO Ms. No.955 Revenue dated 11.5.2005 has notified only the following tiles:-

"14—Marble, Marble articles, Polished Granite slabs/stones and tiles"



15-Marble tiles, Granite slabs and stones”.

Entry 14 refers to Granite tiles and Entry 15 refers to Marble tiles. There is no mention of ‘ceramic tiles’ ‘Earthen tiles’ ‘Glazed tiles’ in the Notification. Ceramic Tiles are not ‘ceramic sanitary ware’, which means, wash basins, commodes etc. Hence as above tiles mentioned in the notice are not notified, it is neither correct nor legal to levy entry tax. Hence levy of tax on these goods is unauthorized and illegal.

Similarly earthen tiles have not been notified under the Act.

As tiles mentioned in the notice are not notified goods, the question of levying entry tax on these goods does not arise at all. If your good self still holds the view that above commodities are notified goods we request to kindly furnish notification number and date in respect of ceramic tiles and earthen tiles, to enable us to file further objections.

Without prejudice to the above, we submit that we are engaged in the business of execution of works contracts in the nature of construction and sale of residential complexes. In accordance with the provisions contained in section 4 (7) (d) of the TVAT Act 2005, we have opted to pay tax under composition scheme. Accordingly, we have used Cement and tiles in the construction of residential complexes, and thereafter affected deemed sale of those goods in the nature of works contract. As imported goods are resold we are not liable to pay entry tax on those goods as per section 3 (2) of the Act.

We next submit that under Section 3 (1) of the Act, only entry of the notified goods into any local area is liable to tax at the rates notified by the Government. If the goods are not notified, then the question of paying entry tax does not arise at all. We hereunder extract the charging Section from the Entry Tax Act:-

“3. Levy and collection of tax.—

(1) (a) There shall be levied and collected a **tax on the entry of the notified goods into any local area for sale**, consumption or use therein. The goods and the rates at which, the same shall be subjected to tax shall be notified by the Government. The tax shall be on the value of the goods as defined in clause (n) of sub-section (1) of section 2 and different rates may be prescribed for different goods or different classes of goods or different categories of persons in the local area;

(b) the tax shall be payable by the importer in such manner and within such time as may be prescribed;

(c) the rate of tax to be notified by the Government in respect of any commodity shall not exceed 2[the rate applicable for the commodity under the Andhra Pradesh Value Added Tax Act, 2005] or the notifications issued thereunder :

Provided that the tax payable by the importer under this Act shall be reduced by the amount of tax paid, if any, under the law relating to 3[Value Added Tax] in force in the Union Territory or State, in which the goods are purchased.

(2) Notwithstanding anything contained in sub-section (1), no tax shall be levied on the notified goods imported by a dealer registered under 4[the Andhra Pradesh

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Value Added Tax Act, 2005] who brings such goods into any local area for the purpose of resale 5[or using them as inputs for manufacture of other goods] in the State of Andhra Pradesh (Telangana) or during the course of inter-State trade or commerce.”

Thus if any notified goods are brought into the local area by a registered dealer for the purpose of resale in the State no entry tax need be paid. In this connection we submit that in his **circular NO.A1(3)/2089/2002** dated 17.08.2002, the Honourable Commissioner of CT, AP, Hyderabad has clarified that if Bitumen brought is sold or used in works contract, no tax is payable. Your good self is well aware that the transaction of works contract is a deemed sale of goods. It is settled law that for the purpose of sales taxation, there is practically no difference between an ordinary sale and deemed sale of goods. The above clarification of the commissioner of CT holds good in respect of our case also as all the goods mentioned in the notice have been fully used in the construction of residential complexes on which we have paid tax under section 4(7)(d) of the VAT Act. We are therefore eligible for exemption from payment of tax in respect of entire turnover mentioned in the notice in terms of section 3(2) of the VAT Act. We therefore request to kindly drop the entire proposal as the same is contrary to the provision contained in section 3(2) of the Act. We are herewith enclosing copy of the circular.

We further submit that, sub-Section (28) under Section 2 of TVAT Act, 2005, inter alia defines ‘sale’ as follows:-

“Section 2 (28) ‘Sale’ with all its grammatical variations and cognate expressions means every transfer of the property in goods (whether as such goods or in any other form in pursuance of a contract or otherwise) by one person to another in the course of trade or business, for cash, or for deferred payment, or for any other valuable consideration or in the supply or distribution of goods by a society (including a co-operative society), club, firm or association to its members, but does not include a mortgage, hypothecation or pledge of, or a charge on goods.

Explanation VI :- Whenever any goods are supplied or used in the **execution of a works contract**, there shall be deemed to be a transfer of property in such goods, whether or not the value of the goods so supplied or used in the course of execution of such works contract is shown separately and whether or not the value of such goods or material can be separated from the contract for the service and the work done.”

In view of the above, we submit that there is no difference between a deemed sale and a simple sale. Both constitute one and the same for the purpose of sales taxation. A simple sale and deemed sale shall therefore stand on the same footing and are to be given the same status and legal validations. There cannot be any differentiation and discrimination between normal sale and a deemed sale. Therefore there shall be deemed sale of goods, when the goods are used and transferred in the execution of works contracts. Hence we resold all those goods.

Deduction:-

We next submit that under the Proviso to Section 3 of the Entry Tax Act, 2001, VAT or CST paid to the other State seller has to be deducted from out of the entry

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tax leviable. Hence such deduction has to be given, if at all entry tax is leviable. This is without prejudice to our main contention that we are not liable to pay any entry tax for the reasons already explained supra.

Adjustment:-

Without prejudice to the above, it is submitted that in the event of payment of entry tax, under Section 23 (5) of TVAT Act, entry tax paid on the goods in question shall be adjusted against VAT payable. It is submitted that ITC has not been restricted on the goods in question. Hence entry tax paid has to be given credit under VAT Act and if there is excess credit, it shall be refunded. This contention may kindly be recorded.

We therefore request to kindly drop the entire proposal for various grounds herein explained. We also request to afford us an opportunity of personal hearing before conclusion of the proceedings.

We have purchased land as per the details given below and Constructed / Sold on housing projects on our own land.

Sl. No.	Document No.	Area of Land
1	1426/2007	Ac. 3-01 Gts.
2	3000/2007	Ac. 1-10 Gts.
3	4325/2007	Ac. 0-12 Gts.
4	(AGPA) 1842/09	Ac. 1-02 Gts.

The Registered Sale Deed copy hereby enclosed.

Yours truly,

For Vista Homes

Soham Modi
Partner.

Encl:As Per above

we are subtitled on late