

FORM APP 400
FORM OF APPEAL UNDER SECTION 31
[See Rule 38(2)(a)]

1. Appeal Office Address : The Appellate Dy. Commissioner (CT)
Punjagutta Division, Hyderabad
 2. TIN/GRN : 36292192903
 3. Name & Address : M/s. Vista Homes,
5-4-187, 3&4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad.
 4. I wish to appeal the following decision /
assessment received from the tax office on : 30/07/2019
 5. Date of filing of appeal : /08/2019
 6. Reasons for delay (if applicable enclose a
separate sheet : Not Applicable
 7. Tax Period / Tax Periods : 2017-18(upto June'2017)/Entry Tax
 8. Tax Office decision / assessment Order No. : Assessment order No.39153 dt.24/07/2019
Date. passed by Assistant Commissioner (ST)
M.G. Road – S.D. Road Circle,
Begumpet Division, Hyderabad
 9. Grounds of the appeal (use separate sheet : Separately Enclosed
if space is insufficient
 10. If turnover is disputed
 - a) Disputed turnover : NIL
 - b) Tax on the disputed turnover : Rs.2,27,750/-

If rate of tax is disputed

 - a) Turnover involved : NIL
 - b) Amount of tax disputed : NIL
 11. 12.5% of the above disputed tax paid : Rs.28,469/-
- Note:** Any other relief claimed : Other grounds that may be urged at the
time of hearing.

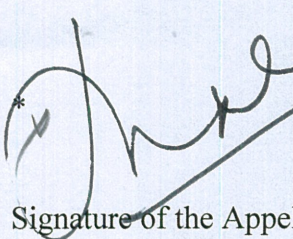
(The payment particulars are to be enclosed if ready paid along with the reasons on Form APP 400A)

12. Payment Details:

a) Challan / Instrument No.	: 190058023
b) Date	: 26-08-2019
c) Bank / Treasury	: Axis Bank.
d) Branch Code	: 28,469/-
e) Amount	: 28,469/-
TOTAL	: 28,469/-

Declaration:

I, _____ hereby declare that the information provided on this form to the best of my knowledge is true and accurate.

Signature of the Appellant & Stamp

Date of declaration :

Name :
Designation :

Please Note: A false declaration is an offence.

**VISTA HOMES,
M.G. Road, Secunderabad.**

Statement of facts:-

Entry Tax/2017-18 (upto June, 2017)

1. It is submitted that the appellant is a registered VAT dealer under the provisions of the TVAT Act, 2005 (for short VAT Act) on the rolls of the Commercial Tax Officer, M.G. Road, Secunderabad (for short CTO). Appellant is also registered under the CST Act, 1956 (for short CST Act). Appellant is engaged in the business of execution of works contracts in the nature of constructing and selling flats, etc.
2. It is submitted that the learned Assistant Commissioner of State Tax, M.G. Road-S.D. Road Circle, Begumpet Division, Hyderabad (formerly CTO) (hereinafter referred to as AC) issued pre-assessment notice dated 29.06.2019 under the provisions of the Telangana Tax on Entry of Goods into Local Areas Act, 2001 (for short Entry Tax Act) proposing to demand tax of Rs.2,27,750.
3. Subsequently, the learned AC passed the assessment order dated 24.07.2019 raising entry tax demand of **Rs.2,27,750** for the period **2017-18 (upto June, 2017)**.
4. Aggrieved by such assessment proceedings, appellant prefers this appeal on the following grounds, amongst others:-

Grounds of appeal:-

- a. The impugned order is ex-facie illegal, arbitrary, improper and unjustifiable.
- b. It is submitted that the learned AC has issued a very brief proforma show cause notice stating that examination of data and records available in the VATIS system of Commercial Taxes Department revealed that appellant has imported notified goods into the State of Telangana by issuing statutory forms and that exemption from liability of Entry Tax is available only when the notified goods are resold or used as inputs in manufacture. Accordingly it has been proposed to demand tax of **Rs.2,27,750/-** on the purchase of notified goods during the period **2017-18 (upto June, 2017)**.
- c. It is submitted that the appellant has executed the project of constructing flats in Hyderabad. Appellant has purchased cement and parts and accessories of lifts from out of State and used the goods purchased within the State and from outside the State in the

construction of flats and thereafter effected deemed sale of those goods in the nature of works contract along with the constructed flat. All the goods purchased by the appellant from other States are deemed to have been sold in the execution of works contracts.

- d. As per the annexure enclosed to the notice the learned AC proposed to levy entry tax on cement; lifts, elevators, accessories & parts thereof. It shall be pertinent to submit that except stating that they are 'notified' goods, there is practically no clue in the notice or in the impugned order as to in which Notification, these goods have been notified. The show cause notice as well the order are therefore non-speaking. The learned CTO failed to discharge the burden cast upon him. Under Article 265 of the Constitution of India, no tax shall be levied except by an authority of law. There is nothing to show in the impugned order as to under which law (Notification), tax has been levied. For this ground only the impugned order is liable to be set aside.
- e. Appellant contended 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, appellant submitted 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 appellant has resold all those goods.

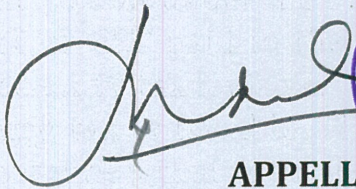
- f. It is next submitted that under Section 3 (1) of the Entry Tax Act, only entry of the notified goods into any local area is liable to tax at the rates notified by the Government. Further Section 3 (2) of the Act reads as follows:-

“(2) Notwithstanding anything contained in sub-section (1), no tax shall be levied on the notified goods imported by a dealer registered under the Andhra Pradesh Value Added Tax Act, 2005 who brings such goods into any local area **for the purpose of resale or using them as inputs for manufacture of other goods** in the State of Andhra Pradesh or during the course of inter-State trade or commerce :”

- g. 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 appellant submits that in his circular No.A1(3)/2089/2002 dated 17.8.2002, the Honourable Commissioner of CT, AP, Hyderabad has clarified that if Bitumen brought is sold or used in Works Contract, no tax is payable. It is settled law that for the purposes of sales taxation, there is practically no difference between an ordinary sale and a deemed sale of goods. Goods incorporated in the works are deemed to have been sold. The above clarification of the Commissioner of CT holds good in respect of this case also. Appellant therefore submits that it is eligible for exemption from payment of tax in respect of the entire turnover mentioned in the notice in terms of Section 3 (2) of the Act.

- h. **CEMENT, LIFTS, ELEVATORS, ACESSORIES AND PARTS THEREOF AND SANITARYWARE**—Appellant submits that 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 appellant submits that it has used these goods in the construction of flats, etc., which are sold subsequently. As the appellant has resold all these goods purchased from other States, the same are exempt from levy of entry tax in terms of Section 3 (2) of the Entry Tax Act.

- i. Without prejudice to all the above, it is submitted 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 tax leviable. Hence such deduction has to be given, if at all entry tax is leviable. This is without prejudice to the appellant's main contention that the appellant is not liable to pay any entry tax for the reasons already explained supra.
- j. It is therefore submitted that the impugned levy of entry tax is illegal and improper.
- k. For these grounds and the other grounds that may be urged at the time of hearing, appellant prays to set aside the impugned order and allow the appeal.


APPELLANT.



APPLICATION FOR STAY OF COLLECTION OF DISPUTED TAX

[Under Section 31(2) & 33(6)] [See Rule 39(1)]

01. Appeal Office Address:
To,
The Appellate Deputy Commissioner (CT)
Punjagutta Division, Hyderabad

Date Month Year

	08	2019
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02	TIN	36292192903
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03. Name M/s. Vista Homes
Address: 5-4-187, 3&4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad.

04.	Tax period	2017-18(upto June'2017)/Entry Tax
05.	Authority passing the order or proceeding disputed.	Assessment order No.39153 dt.24/07/2019 passed by Assistant Commissioner (ST) M.G. Road - S.D. Road Circle, Begumpet Division, Hyderabad.
06	Date on which the order or proceeding was Communicated.	/07/2019
07.	(1) (a) Tax assessed	Rs.2,27,750/-
	(b) Tax disputed	Rs.2,27,750/-
	(2) Penalty / Interest disputed	NIL
08	Amount for which stay is being sought	Rs.2,27,750/-
09.	Address to which the communications may be sent to the applicant.	M/s. Vista Homes, 5-4-187, 3&4, 2 nd Floor, Soham Mansion, M.G. Road, Secunderabad.

Signature of the Dealer(s)

Signature of the Authorised Representatives if any



10. GROUNDS OF STAY

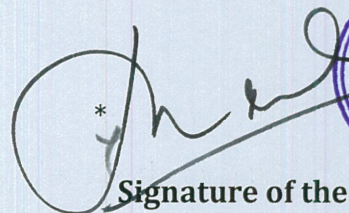
- 1.) Substantial question of facts and law that may arise in the appeal.
- 2.) The appellant will be hard hit if it is called upon to pay this heavy amount of tax pending disposal of the appeal.
- 3.) The grounds that are stated in the main appeal may kindly be read as grounds of this appeal.

Hence it is just and necessary that the Appellate Dy. Commissioner (CT) may be pleased to grant stay of collection of the disputed tax of Rs.2,27,750/- pending disposal of the appeal.

VERIFICATION

I, _____ applicant (s) do hereby declare that what is stated above is true to the best of my / our knowledge and belief.

Verified today the _____ day of August'2019


*

Signature of the Dealer(s)

Signature of the Authorised Representatives if any

AAO.No. 39153

GOVERNMENT OF TELANGANA
STATE TAX DEPARTMENT



PROCEEDINGS OF ASSISTANT COMMISSIONER (ST), M.G. ROAD - S.D. ROAD CIRCLE,
BEGUMPET DIVISION, HYDERABAD.

Present: G. Rajya Lakshmmi, M.B.A., LL.M.,

Rc.No. 36292192903/2017-18

Dated:24.07.2019

ASSESSMENT UNDER TELANGANA TAX ON ENTRY OF GOODS INTO LOCAL AREAS
ACT, 2001
(See Sec.6 and Rule 4 & 5)

Sub: - The Telangana Tax on Entry of Goods into Local Areas Act, 2001 - M/s. Vista Homes -
M.G. Road - S.D. Road - Scrutiny of Entry tax - Scrutiny Show Cause Notice issued -
Reply not filed - Orders passed - Reg.

- Ref: - 1) Authorization of Assessment issued by the Dy. Commissioner (CT), Begumpet
Division dated:29.06.2019.
2) Show Cause Notice issued dated: 29.06.2019.
3) E mail sent to the dealer on 20.07.2019 informed to file their written objections for
finalization of Entry tax.
4) Contacted over phone to Sri Srinivasa Sarma said to be the authorized person of the
firm from No. 9298959363 to 9100253761 on 20.07.2019, 22.07.2019 & |
23.07.2019 informed to file their written objections for finalization of Entry tax.

ORDER:

The Telangana Tax on Entry of goods into Local Areas Act, 2001 envisages levy of Entry Tax on Import of notified goods into the State of Telangana for consumption. 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 Nos.8053 - 8077). Therefore, Entry Tax is liable to be paid on notified goods imported into the State of Telangana.

Examination of data and records available in the VATIS system of Commercial Taxes Department has revealed that you have imported notified goods into the State of Telangana by issuing Statutory Forms. Exemption from liability from Entry Tax is available only when the notified goods are re-sold or used as inputs in manufacture. As seen from the nature your business and the commodities imported, it is opined that the commodities in the annexure are consumed by you. Therefore, you are liable to levy of Entry Tax under Section 3 of the Act. The Entry Tax liability for the year 2017-18 (April-June) is given in the annexure to this notice and is arrived as below:

Sl.No.	Year	Entry Tax Proposed (Rs)
1.	2017-18 (April-June)	2,27,750-00

The commodity-wise statement and invoice wise statement relating to import of notified goods made by you, are enclosed herewith. It is therefore, proposed to assess you for the year 2017-18 (April-June) on the turnovers and at the rates mentioned in the annexure to this notice.

Accordingly a show cause notice dt: 29-06-2019 served on 08.07.2019 to the dealers, giving 15 days time, to submit their written objections if any against the proposed assessment, e mail sent on 20.07.2019 and also contacted over phone to file their objections to the above said show cause notice. But, so far the dealer has not filed any objections. Hence, it is construed that the dealer is not having any valid objections to file against the proposed assessment. Therefore the assessment under the Telangana Tax on Entry of Goods into Local Areas Act, 2001 for the period 2017-2018 (Apr-June) is hereby completed by confirming the tax proposed in the show cause notice dt.29.06.2019.

In view of the above findings, the final assessment for the tax period 2017-18 (April-June) is completed under the Telangana Tax on Entry of Goods into Local Areas Act 2001 as under:

Tax levied on Purchase of Cement	Rs.2,27,750-00
Tax paid	Nil
Balance payable	Rs.2,27,750-00

An appeal against this order can be filed before the Appellate Deputy Commissioner (CT), Punjagutta within (30) days of receipt of this order.


Assistant Commissioner (ST), 24/7/2019
M.G. Road - S.D. Road Circle,
Begumpet Division, Hyderabad.
M.S. Road - S.D. Road Circle,
Begumpet Division, Hyderabad.

To,
M/S. VISTA HOMES
5 4 187/3 & 4, 2nd Floor, Soham Mansion,
M.G. Road; Secunderabad-500003.