



PROCEEDINGS OF ASSISTANT COMMISSIONER (ST), M.G.ROAD-S.D.ROAD CIRCLE
CONSEQUENT ORDERS ON DEMAND OF APPEAL
Prescribed by the Government of Telangana

A.O No:17539

TIN 36292192903/2017-18/ET

Dated 13-07-2022

Sub: ET Act 2001 – M/s Vista Homes, Secunderabad. – Assessment completed for the period 2017-18- orders passed- Dealer preferred appeal before the ADC(CT) Punjagutta Division – Appeal Remanded – notices issued for production of books – not responded – show cause notice issued – Objections called for – sought extension of time – time granted – Final notice issued – personal hearing opportunity provided – not responded – orders passed - Regarding.

- Ref: 1) Assistant Commissioner (ST), M.G.Road-S.D.Road Circle. Order No.39153, Dt:24-07-2019.
2) Order passed by the Hon'ble ADC (CT) Punjagutta vide AO.No.416, Dt.27-02-2021
3) Notice dt.16.09.2021 issued by the undersigned.
4) Notice dt.01.02.2022 issued by the undersigned.
5) Show cause Notice Dt.10.05.2022 issued by the undersigned.
6) Letter Dt.18.05.2022 filed by the dealer.
7) Final notice Dt.24.06.2022 issued by the undersigned.
8) Notice for personal hearing Dt.05.07.2022 issued by the under signed.

M/s Vista Homes, Secunderabad, is a registered dealer on the rolls of Assistant Commissioner (ST), M.G.Road-S.D.Road Circle with TIN: 36292192903. Vide the reference 1st cited their assessment under ET Act, 2001 for the period 2017-18 was completed on the following under declared tax:

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

Aggrieved by the orders, the dealer has preferred an appeal before the Hon'ble ADC (CT) Punjagutta disputing the above levy of tax. The Hon'ble ADC (CT) Punjagutta has remanded the appeal vide orders passed in the reference 2nd cited.

In the light of the Hon'ble ADC orders, vide references 3rd and 4th cited above two notices were issued to the dealer for production of books of account if any as per the instructions issued by the Hon'ble ADC. But the dealer has not responded to the notices so issued. Hence in the

absence of dealer's response, the undersigned vide reference 5th cited while extracting the contents of Hon'ble ADC orders, has issued a show cause notice as under:

"I have heard the Authorized Representative and gone through his contentions as well as the contents of the impugned orders. The appellant is engaged in construction of Residential Apartments. The Assessing Authority on examination of data and records available in the VATIS system has observed that the appellant has imported notified goods into the State of Telangana by issuing Statutory forms. Further observing that the exemption from liability of Entry Tax is available only when the notified goods are re-sold or used as inputs in manufacture, the Assessing Authority opined that as per the nature of business of the appellant, the commodities imported by the appellant are consumed by them and are liable to pay tax under Entry Tax as per Section 3 of the said Act. Thus observing, the Assessing Authority proposed to levy entry tax on the commodities imported by the appellant and issued a show cause notice. On an observation that the appellant had not filed any objections, the Assessing Authority passed orders confirming the levy of tax as was proposed in the show cause notice.

Such order is assailed by the appellant stating that since the goods purchased from outside the State were incorporate into the execution of works contract i.e., construction of residential apartments and the appellant had already discharged the VAT liability on the consideration received on account of execution of such work, the question of levying entry tax does not arise in as much as works contract is a deemed sale which is to be treated on par with a normal sale as held by Courts of Law. In support of such claim, the appellant filed a copy of assessment order passed under the TVAT Act for the tax periods 2013-14 to 2017-18 (upto June, 2017).

Thus, the only point that needs to be answered is as to whether the Assessing Authority is justified in brining the disputed turnover herein to tax under the Entry of Goods into Local Areas Act on the value of goods purchased and incorporated by the appellant in the construction of residential apartments / Flats.

Before proceeding any further, it is necessary here to take note of the definition of 'works contract' as contained in Section 2 (45) of the TVAT Act which reads as under:

2(45) 'Works Contract' includes any agreement for carrying out for cash or for deferred payment or for any other valuable consideration, the building construction, manufacture, processing, fabrication, erection, installation, laying, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;

As seen from the above, works contract includes any agreements for carrying out for cash or deferred payment or for any other valuable consideration, the building construction, processing, fabrication, erection etc., of any movable or immovable property. In order to satisfy this definition, it is not just enough if there is an

agreement to carry out any of the works mentioned in the said definition, but also such carrying out of the work should be for a cash or deferred payment or for any other valuable consideration. Thus, assuming that in the disputed transaction undertaken by the appellant even if they had undertaken any execution of works in favour of the land owner, unless the same is for cash or deferred payment or for any other valuable consideration, the same does not satisfy the definition of works contract. There was no monetary consideration flowing from the land owner to the appellant towards execution of works contract. Even if the word "other valuable consideration" as occurring in the definition of "works contract" has to be in monetary form only and not in any other form.

It is settled law that the works contract is a deemed sale and the same is to be treated as on par with a normal sale and consequently the benefits extended to such normal sale is also to be extended to a deemed sale. The Entry Tax on Goods Act provides exemption to the notified goods purchased from inter-state when used for the purpose of re-sale or manufacturing for sale. Similarly, the notified inter-state purchases are used in the deemed sale, the benefit of exemption is also applicable to the deemed sale under Entry Tax on Goods Act. However, this is only applicable to those goods which are transferable in the deemed sale to the extent of builder share, but not on the share which was transferred to the land Owner under the development agreement entered into by the appellant with such land Owner.

Here, it is also to be observed that the goods purchased by the appellant from outside the State against statutory forms and utilized the same in such houses / flats relating to Land Owner share amounts to consumption of such goods by them. Since the houses / flats constructed in the Land Owner share amounts to immovable property owned by the Land Owner and the same neither amounts to works contract nor construction and selling of such houses / flats so as to fall under Section 4(7)(d) of the TVAT Act and even if such houses / flats were sold by the land owner after completion of the same, the same does not amount to goods being immovable property. This view further gain support from the decision rendered by the Honourable Supreme Court in the case of *M/s Raheja Development Corporation Vs State of Karnataka* (41 STC 298).

As already discussed above, it is a fact that since no sale had taken place between the appellant and the landowner subsequent to the incorporation of the notified goods into this portion and in fact it actually amounts to consumption at the hands of the appellant and is liable for levy of Entry Tax on land owner share. Thus the contention of the appellant that the property so transferred to Land Owner is nothing but a deemed sale and the imported goods used for the purpose of re-sale falls under the ambit of Section 3(2) of the Entry Tax on Goods Act is devoid of merits.

However, as already observed above, since the Assessing Authority has passed the impugned order only in the absence of the appellant filing the objections to the show cause notice issued, I feel it just and proper to remit the matter back to the territorial Assessing Authority, who shall provide an opportunity to the appellant to file

their objections along with documentary evidence if any, consider the same and then pass orders afresh in accordance with the provisions of law, duly bearing in mind my observations made above. With this direction, the impugned order is set-aside in so far as it relates to the disputed tax amounting to Rs.2,27,750/- and the appeal thereon remanded.

In the end, the appeal is **REMANDED**".

In order to pass the consequential order, in the light of instructions issued by the Hon'ble ADC, the dealer has to submit documentary evidence to substantiate their claim. However, so far, they have not submitted any documentary evidence. Hence it is proposed to issue Show cause Notice by confirming the original orders as under:

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

Total tax due to Government :Rs. 2,27,750-00
Less: tax paid while filing appeal :Rs. 28,469-00 vide challan No.1900588023,Dt.26.08.2019
Balance :Rs. 1,99,281-00"

In response to the above show cause notice, vide reference 6th cited the dealer has filed a letter Dt.18-05-2022 requesting to grant of 30 days additional time for submitting their reply. The same was granted to the dealer as per his request. But the dealer has neither submitted any objections nor filed any documentary evidence. However, under the principles of natural justice vide references 7th and 8th cited two more opportunities are provided to the dealer for filing of objections/documentary evidence and to avail personal hearing opportunities before the undersigned on dates 01.07.2022 and 11.07.2022. But so far the dealers have neither filed any objections/documentary evidence nor availed personal hearing opportunity. Hence it is construed that the dealer is not having any valid objections against the proposed consequential orders. Therefore the consequential orders are hereby passed by confirming the show cause notice as under:

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

Total tax due to Government :Rs. 2,27,750-00
Less: tax paid while filing appeal :Rs. 28,469-00 vide challan No.1900588023,Dt.26.08.2019
Balance :Rs. 1,99,281-00

The dealer has to pay the demand of Rs.1,99,281-00 within 15 days of receipt of this order failing which recovery proceedings will be initiated.

The dealer can file an appeal against this order before the appropriate Appellate authority within the prescribed time.

To,
M/s Vista Homes,
54 187/3 & 4, 2nd Floor, Soham Mansion,
M.G. Road, Secunderabad-500003

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