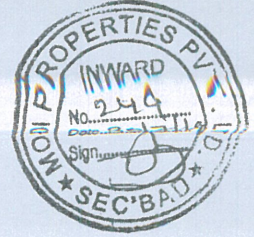
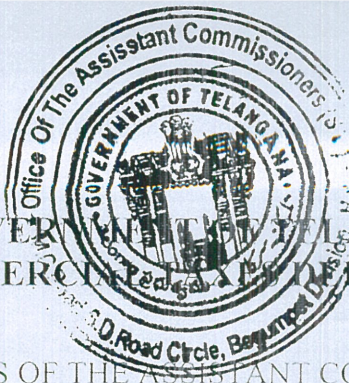


AAO.No. 39341

**GOVERNMENT OF TELANGANA  
COMMERCIAL TAXES DEPARTMENT**



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

**Present: G. Rajya Lakshmmi, M.B.A., LL.M**  
(See Sec.6 and Rule 4 & 5)

TIN: 36607622962

Date: 25-07-2019

Sub: The Telangana Tax on Entry of Goods into Local Area Act 2001  
M/s. Nilgiri Estates – Show cause notice issued for the 2017-18 (Apr-Jun)  
Reply filed – Personal hearing provided – not utilized – Orders passed – Reg.

- Ref: 1) The Deputy Commissioner (CT), Begumpet Division authorization for assessment, dt. 29.06.2019.  
2) This office Show cause notice dt. 29.06.2019.  
3) Dealers reply dt. 22.07.2019 received on 23.07.2019.  
4) Personal hearing opportunity provided dated. 24.07.2019 sent through e mail and also informed over phone on 23.07.2019 to Sri. Srinivasa Sarma said to be the authorized representative from phone No. 9298959363 to Phone no. 9100253761.

**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 (Apr-Jun) is given in the annexure to this notice and is arrived as below:

| Sl.No. | Year              | Entry Tax Proposed (Rs) |
|--------|-------------------|-------------------------|
| 1.     | 2017-18 (Apr-Jun) | 176,588                 |

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 (Apr-Jun) on the turnovers and at the rates mentioned in the annexure to this notice.

Accordingly a notice has been issued to the dealer dt. 29.06.2017 with a request to file their written objection if any within the stipulated time and the same was got served on the dealer on dt: 08.07.2019 in response of show cause notice the dealer filed reply on dt:22.07.2019. The reply of the dealer is reproduced as under,

We submit that we are in receipt of the show cause notice dt. 04.07.2019 issued under 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 of Entry tax of Rs. 176,588/-. 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 Telanagana.

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 manufacturing and that as seen from the nature of our business and the commodity imported, it is opined that the commodity in the annexure are consumed by us. Hence it is concluded that we are liable to pay entry tax. The commodity stated to be purchased during the year is **Cement** as per the notice. We request to kindly consider our objections on the following grounds:-

We submit that we are engaged in the business of execution of works contracts in the nature of construction and sale of residential villas. 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 in the construction of residential villas, and thereafter affected deemed sales of cement 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 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 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 forces 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 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 the local area by a registered dealer for the purpose of resale in the state no entry tax need to be paid. In this connection we submit that in his **circular NO. A1(3)/2089/2002** dated 17.08.2002, the Honurable Commissioner of CT, AP, Hyderabad has clarified that if Bitumen brought is sold or used in 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 villas 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) 'Sales' 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 sales. 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 sales. 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 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".

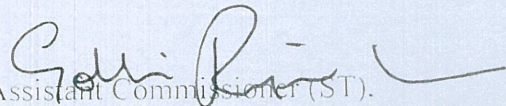
As per the dealers request a Personal hearing opportunity dated.24.07.2019 has been provided to dealer sent through e mail and also informed over phone on 23.07.2019 to Sri Srinivasa Sarma said to be the authorized representative from phone No. 9298959363 to Phone no. 9100253761 which was not utilized by them.

The contentions filed by the dealer are carefully examined and it is noticed that in support of their objections they have not filed any documentary evidence showing that they have consumed the purchased material used for their works contracts. In the absence of inextricable documentary evidence towards their contention the amount so proposed in the show cause notice is hereby confirmed as under

Thus the final assessment for the tax period 2017-18 (Apr-Jun) is completed under the Telangana Tax on Entry of Goods into Local Areas Act 2001 as under:

|            |              |
|------------|--------------|
| Tax levied | : 1,76,588/- |
| Tax paid   | : Nil        |
| Balance    | : 1,76,588/- |

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

  
Assistant Commissioner (ST).  
M.G. Road - S.D. Road Circle. 25/7/2018  
Begumpet Division, Hyderabad.  
**Assistant Commissioner (ST)**  
**M.G. Road - S.D. Road Circle,**  
**Begumpet Division, Hyderabad.**

To,

M/S. Nilgiri Estates,  
5 4 187/3 and 4, Second Floor,  
Soham Mansion, M.G. Road,  
Secunderabad - 500 003.

TIN

FIRM

SELECT PURPOSE - Disputed Tax Demand Paid Before ADe (ADM)  
Tax Period - 2017-18 (Apr - Jun)

② → Appeal fee before ADe