

**NILGIRI ESTATES,
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 Circle, 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.1,76,588.
3. Pursuant to that notice, appellant filed detailed objections on 23.07.2019.
4. However without considering the objections filed, the learned AC passed the assessment order dated 25.07.2019 raising entry tax demand of **Rs.1,76,588** for the period **2017-18 (upto June, 2017)**.
5. Aggrieved by such assessment order, appellant preferred appeal before this Honourable Authority. On a consideration of the grounds and the documents, this Honourable authority has set aside the said assessment order and remanded the matter with specific directions to the assessing authority vide order No.417 dated 27/02/2021.
6. On such remand, the jurisdictional authority ie., the Assistant Commissioner(ST)(FAC), M.G.Road-S.D.Road Circle (for short AC) issued Show cause notice dated 10/05/2022 to produce books of account to pass consequential orders . Pursuant to that notice, the appellant has filed letter on 18/05/2022 requesting time for submission of objections and documentary evidence. However

without giving sufficient time, the learned AC passed the consequential order No.17541 dated 13/07/2022 raising the very same demand of **Rs.1,76,588/-**.

7. Aggrieved by such consequential order, 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 and is passed against the principles of natural justice and hence the same is liable to be set aside.
- b. It is submitted that the learned AC is not justified in passing the impugned order in haste without providing sufficient opportunity. It is submitted that the learned ADC has set aside the first assessment order and has remanded the issue back to the assessing authority to pass consequential orders.
- c. It is submitted that as per Section 37 of the TVAT Act, the assessing authority is having time of 3 years to pass the consequential orders in order to give effect to the order passed by the learned Appellate Deputy Commissioner. It is submitted that the learned ADC has passed the appeal order on 27.02.2021 and the assessing authority is having time up to 26.02.2024 to pass the consequential orders. It is true that the learned AC has issued notice for production of documents, however, due to illness of the concerned accounts head who is looking about the VAT issues, the appellant is not able to provide the relevant data to the learned AC. However, the learned AC without giving sufficient further time to the appellant has passed the impugned order with the very same demand.
- d. It is submitted that the appellant is having all the information that is required to complete the assessment and this information is already produced before this Honourable ADC.

- e. The appellant submits that the learned AC ought to have issued one more notice to the appellant instead of passing the impugned order in haste. The appellant therefore submits that the impugned order is liable to be set aside on the principles of natural justice. In any case appellant submits that they are having strong case on merits.
- f. Without prejudice to the above submissions the appellant submits as under.
- g. It is submitted that the impugned order is highhanded and non-speaking beyond a point. It has been passed in clear violation of principles of natural justice, in as much as the learned authority has refused to look into the letter of objections as nothing has been discussed by him.
- h. It is sad that the learned authority has not at all considered single objection. The impugned order has been passed only for the purpose of harassing a genuine dealer and nothing else, in the humble submission of the appellant.
- i. 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.1,76,588/-** on the purchase of notified goods during the period **2017-18 (upto June, 2017)**.
- j. It is submitted that the appellant has executed the project of constructing flats in Hyderabad and has opted for payment of tax under composition. 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 flats. All the goods

purchased by the appellant from other States are deemed to have been sold in the execution of works contracts.

- k. 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 is therefore non-speaking. The learned AC 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.
- l. 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.

- m. 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 :”

- n. 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.
- o. On submission of reply as above the learned AC stated that in support of the objections filed the appellant has not filed any documentary evidence showing that it has consumed the purchased material in the works contract. Appellant submits that in the letter of objections the appellant has clearly stated that the commodities as per the annexure have been used by it in the construction of flats ie., execution of works contract and hence by virtue of definition of sale as per Section

2(28) of TVAT Act and Explanation VI given thereunder, there shall be deemed to be a transfer of property in goods in the execution of contract and there is no difference between a deemed sale and a simple sale. Hence there is no liability to pay entry tax. As the appellant has already stated that the goods purchased from outside the State are used in the construction of flats which are deemed to have been sold and paid the tax on the output turnover it is highly unjustified to make a sweeping comment that there is no other documentary evidence. The AC being the assessing authority under the VAT Act very much knows that the appellant has been paying tax on the sale of flats as and when they are sold. No other documentary evidence is required. Thus the assessment order passed is not justified and is therefore liable to be set aside.

- p. **CEMENT, LIFTS, ELEVATORS, ACCESSORIES 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.
- q. It shall be pertinent to submit that whereas all the other builders have been exempted from payment of entry tax in similar circumstances, there is no reason in targeting the appellant for the purpose of levy of entry tax.
- r. 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.

- s. It is therefore submitted that the impugned levy of entry tax is illegal and improper.
- t. 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.