



PROCEEDINGS OF ASSISTANT COMMISSIONER (ST), M.G. ROAD-S.D. ROAD CIRCLE
CONSEQUENT TO ORDER ON MAND OF APPEAL

Prasanna Lakshmi

A.O No:17541

TIN 36607622962/2017-18/ET

Dated 13-07-2022

Sub: ET Act 2001 – M/s Nilgiri Estates, 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.39341, Dt:25.07.2019.
2) Order passed by the Hon'ble ADC (CT) Punjagutta vide AO.No.417, 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 undersigned

M/s Nilgiri Estates, Secunderabad, is a registered dealer on the rolls of Assistant Commissioner (ST), M.G.Road-S.D.Road Circle with TIN: 36607622962. 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	: 1,76,588/-
Tax paid	: Nil
Balance	: 1,76,588/-

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 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 has while extracting the contents of Hon'ble ADC orders, issued a show cause notice as under:

"I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. The appellant is dealing in execution of works contract. For the disputed tax periods, the Assessing Authority observed that on examination of the records available in the VATIS system of the Department, it was revealed that the appellant had made purchases of notified goods from other States and since the exemption from of liability for entry tax is available only when such notified goods are re-sold or used as inputs in manufacture and as seen from the nature of the business and the commodities purchased, it was opined that the commodities purchased are consumed by the appellant. With these observations, the Assessing Authority issued a show cause notice proposing to levy tax under the Entry Tax on Goods Act involving the disputed tax amount herein. The appellant filed their objections stating that since the goods purchased were used in the execution of works contract undertaken by them, no entry tax can be fastened on such purchases as the transaction is one in the nature of deemed sale. However, the Assessing Authority rejected such objections on the ground that the appellant had not filed any documentary evidence to support their claims and passed the impugned orders confirming the levy of tax as was proposed in the show cause notice.

The levy of tax made by the Assessing Authority is assailed by the appellant on several counts, but mainly on the ground that they have purchased the goods in question from outside the State and used the same in the execution of works contract and the applicable VAT has been paid and since there is a deemed sale of the goods used in the works contract and the deemed sale is to be treated on par with a normal sale and in view of the provisions of Section 3(2) of the Entry Tax Act, no tax can be levied. In support of such contention, the appellant also furnished a copy of assessment order passed under the TVAT Act for the disputed tax periods.

Thus, the only point that arises in the present appeal is whether the Assessing Authority is correct in levying the impugned entry tax or not or the appellant is eligible for exemption on the goods purchased from outside the State used in the execution of works contract, as per the provisions referred to above.

In order to examine the rival claims, it is necessary to go through the provisions contained under Section 3 of the Entry Tax on Goods Act, which reads as under:

"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 the rate applicable for that commodity under the Andhra Pradesh Value Added Tax Act, 2005 (Act 5 of 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 Value Added Tax in force in Union Territory or State, in which the goods are purchased or Central Sales Tax Act, 1956.

(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.

From the above provisions, it can be seen that as per clause (a) of sub-section (1), tax is to be levied and collected on entry of the notified goods into any local area for sale, consumption or use therein on the goods and rates that will be notified by the Government. As per sub-section (2), no tax is to be levied on the goods imported by a dealer registered under the VAT Act who brings such goods into the local area for the purpose of re-sale or using them as inputs for manufacture of other goods in the State or during the course of inter-State trade or commerce.

Here, it also necessary to take note of the circular issued by the Commissioner of Commercial Taxes in ref No. CCT's Ref. No.AI (3)/911/2005- dated 23-01-2006, wherein it was clarified and instructed that all the notified goods, imported by the dealers, registered under APVAT Act, from outside the state for the purpose of resale as well as for the purpose of using them as inputs for manufacture of other goods in the State are not liable tax under the Entry Tax on Goods Act.

Now the only issue that needs to be decided is whether there is a resale of goods when goods are used as inputs in execution of works contract or not? Not only the definition of "Sale" as contained in sub-section (28) of Section 2 of the TVAT Act takes within ambit a deemed sale within its ambit, but also it is a settled law that deemed sale is also to be treated on par with a normal sale since in both of them, there is a transfer of property in goods from one person to another. This view of deemed sale is also to be treated on par with a normal sale is further fortified by the decision rendered by the Honourable Supreme Court in the case of *M/s Builders Association of India & Others Vs Union of India & Others* (73 STC 370), as relied upon by the Authorised Representative, during the course of personal hearing. In the said decision, while examining the constitutional validity of the provisions relating to levy of tax on the transaction of works

contract (deemed sale), as to the treatment of deemed sale on par with a normal sale, the Honourable Supreme Court observed and held as under:

"If the power to tax a sale in an ordinary sense is subject to certain conditions and restrictions imposed by the Constitution, the power to tax a transaction which is deemed to be a sale under article 366(29-A) of the Constitution should also be subject to the same restrictions and conditions. Ordinarily unless there is a contract to the contrary in the case of a works contract the property in the goods used in the construction of a building passes to the owner of the land on which the building is constructed, when the goods or materials used are incorporated in the building. The contractor becomes liable to pay the sales tax ordinarily when the goods or materials are so used in the construction of the building and it is not necessary to wait till the final bill is prepared for the entire work.

It is not correct to say that the properties that are transferred to the owner in the execution of a works contract are not the goods involved in the execution of the works contract, but a conglomerate, that is the entire building that is actually constructed. The Forty-sixth Amendment does not more than making it possible for the States to levy sales tax on the price of goods and materials used in works contract as if there was a sale of such goods and materials. Sub-clause (b) of article 366(29-A) should not be read as being equivalent to a separate entry in List II of the Seventh Schedule to the Constitution enabling the States to levy tax on sales and purchases independent of entry 54 thereof. As the Constitution exists today the power of the States to levy taxes on sales and purchases of goods including the "deemed" sales and purchases of goods under clause (29-A) of article 366 is to be found only in entry 54 and not outside it.

What follows from the above observations of the Honourable Supreme Court is that restrictions and conditions apply to the normal sale shall also be applicable to the deemed sale.

Here, it is also relevant to refer to the circular issued by the Commissioner of Commercial Taxes, Hyderabad in CCT's Ref.No.AI(31)/2089/2002, dated 17-08-2002 on a representation with regard to Entry Tax on Bitumen filed by M/s Indian Oil Corporation, it was clarified as under:

"With reference to your letter cited, it is to inform that if the Bitumen brought is sold or used in Works Contract, no tax is payable."

In the light of the discussion made above, it is to be concluded that if the goods imported from outside the State are used in execution of works contract, there is a deemed sale and in such a case, no tax can be levied under sub-section (1) of Section 3 of the Entry Tax on Goods Act.

As seen from a copy of assessment order passed under the TVAT Act in A.O.No.5460, dated 23-04-2018 now produced, it is seen that the assessment of the appellant for the tax periods from July, 2015 to Jun2, 2017 (including the disputed tax

periods in the present appeal i.e., from April, 2017 to June, 2017) was completed by the Commercial Tax Officer, Maredpally circle, Hyderabad (for short – Audit Officer) on the authorization issued by the Deputy Commissioner(CT), Begumpet Division, Hyderabad. While doing so, the Audit Officer while rejecting the claim of the appellant that their turnovers to be assessed under Section 4(7)(d) of the TVAT Act on the ground that the appellant had not opted to pay tax under composition by filing Form VAT 250, determined the turnovers of the appellant under Section 4(7)(a) of the TVAT Act read with Rule 17(1)(g) of the TVAT Rules by allowing a standard deduction at 30% towards labour and services and levied tax on remaining 70% of the total contractual receipts. Thus, the claim of the appellant that they are doing business as a works contractor is found to be reasonable.

However, as already observed above, since the Assessing Authority has passed the impugned order confirming the proposed levy of tax made in the show cause notice only on the ground that the appellant had not filed any documentary evidence, I find the matter herein requires verification at the Assessing Authority's end.

For the reasons discussed above, I feel it just and proper to remit the matter back to the territorial Assessing Authority, who shall cause examination of the claims made by the appellant with reference to the relevant documentary evidence that were already available on record or that would be produced by the appellant and pass such orders as deemed fit in accordance with the provisions of law, duly bearing in mind my observations made as well as the judge made law, referred to above, after affording a reasonable opportunity to the appellant to present its case. With this direction, the impugned order is set-aside on the disputed tax amounting to Rs.1,76,588/- 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	: 1,76,588/-
Tax paid	: Nil
Balance	: 1,76,588/-

Total tax due to Government	:Rs. 1,76,588-00
Less: tax paid while filing appeal	:Rs. 22,074-00 vide challan No.1900587985 Dt.26.08.2019
Balance	:Rs. 1,54,514-00”

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

Total tax due to Government :Rs. 1,76,588-00
Less: tax paid while filing appeal :Rs. 22,074-00 vide challan No.1900587985 Dt.26.08.2019
Balance :Rs. 1,54,514-00"

The dealer has to pay the demand of **Rs.1,54,514-00** 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.

G. Vijaya Lakshmi
Assistant Commissioner (Sr) (BAC) (FAC)
M.G. Road & S.D.S. Road Circle,
Begumpet Division, Hyderabad.

To,
M/s Nilgiri Estates,
Address : 5-4-187, 3&4, 2nd Floor, Soham Mansion, M.G.Road, Secunderabad

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