

M.RAMACHANDRA MURTHY
CHARTERED ACCOUNTANT

Flat No.303, ASHOKA SCINTILLA
H.No.3-6-520, Opp. To KFC,
Himayathnagar Main Road,
Hyderabad -500 029
Tel.:040-30878935 / 36

To,
The Appellate Dy. Commissioner (CT)
Punjagutta Division
Hyderabad.

Sir,

Sub:- Filing the appeal in the case of M/s. **Nilgiri Estate, Hyderabad**
- For the year 2017-18(Upto June 2017) Entry Tax- reg.

Please find enclosed herewith the following appeal papers:

1. Form -APP 400 2 copies.
2. Grounds of Appeal 2 copies.
3. Challan bearing No.1900588061 dt.26/08/2019 for Rs.1,000/- towards appeal fees.
4. A.O. No.39341 dt. 25/7/2019 order passed by the Assistant Commissioner (ST) M.G.Road - S.D.Road Circle Begumpet Division, Hyderabad, (in original) along with Xerox copy.
5. Copy of the E-Challan proof of payment of 12.5% disputed tax.
6. Form APP 400A
7. Form APP 406 2 copies.
8. Form -565 (Authorization).

Kindly acknowledge receipt of the above documents and post the appeal for hearing.

Thanking you,
Yours sincerely,

M.Ramachandra Murthy,
Chartered Accountant.



Mail sent on 25-8-19

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 : 36607622962
 3. Name & Address : M/s. Nilgiri Estates,
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.39341 dt.25/07/2019
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.1,76,588/-

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.22,074/-
- 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.	:	
b) Date	:	
c) Bank / Treasury	:	-----
d) Branch Code	:	-----
e) Amount	:	_____

TOTAL	:	_____

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.

**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 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.1,76,588/-** 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 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.
- 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 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.
- 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.

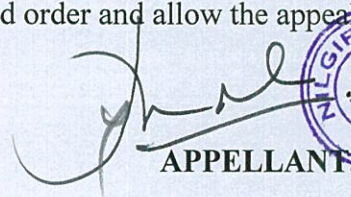
- f. It is next submitted that under Section 3 (1) of the Entry Tax Act, only entry of the notified goods into any local area is liable to tax at the rates notified by the Government. Further Section 3 (2) of the Act reads as follows:-
“(2) Notwithstanding anything contained in sub-section (1), no tax 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. 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.

- i. **CEMENT, LIFTS, ELEVATORS, ACEESSORIES 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.
- j. 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.
- k. 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

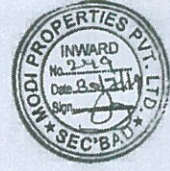
prejudice to the appellant's main contention that the appellant is not liable to pay any entry tax for the reasons already explained supra.

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



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., I.L.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 Honorable 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".

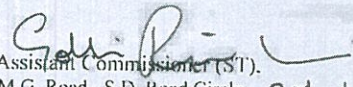
As per the dealers request a Personal hearing opportunity dated 24.07.2019 has been provided to dealer sent through e mail and also informed over phone on 23.07.2019 to Sri Srinivasa Sarma said to be the authorized representative from phone No. 9298959363 to Phone no. 9100253761 which was not utilized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

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

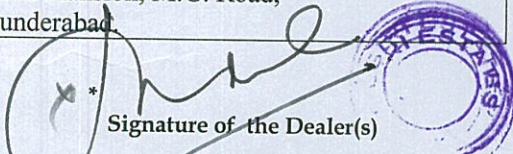
Date Month Year

	08	2019
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02	TIN	36607622962
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03. Name M/s. Nilgiri Estates,
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.39341 dt.25/07/2019 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.	30/07/2019
07.	(1) (a) Tax assessed	Rs.1,76,588/-
	(b) Tax disputed	Rs.1,76,588/-
	(2) Penalty / Interest disputed	NIL
08	Amount for which stay is being sought	Rs.1,76,588/-
09.	Address to which the communications may be sent to the applicant.	M/s. Nilgiri Estates, 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

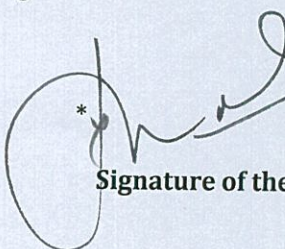
- 1.) Substantial question of facts and law that may arise in the appeal.
- 2.) The appellant will be hard hit if it is called upon to pay this heavy amount of tax pending disposal of the appeal.
- 3.) The grounds that are stated in the main appeal may kindly be read as grounds of this appeal.

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.1,76,588/- 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