GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT

PROCEEDINGS OF THE ASSISTANT COMMISSIONER (ST), M.G.ROAD-S.D.ROAD CIRCLE, BEGUMPET DIVISION, HYDERABAD
PRESENT: Sri B.UPENDER REDDY

AO 52
Tax Periods/Act:-07/2015 to 06/2017 (VAT) Date:-11.02.2025
TIN:-36607622962

REVISED PENALTY ORDER

SUB:-TVAT Act, 2005 - M.G.Road-S.D.Road Circle – Begumpet Division, Hyderabad - M/s.Nilgiri Estates, Secunderabad (for brevity here- in-after referred to in as 'assessee') – VAT Audit-cum-Assessment for the tax periods of 07/2015 to 06/2017 conducted and completed by the AC(ST), M.G.Road-S.D.Road Circle in the form of passing an Assessment Order in Form VAT-305 (tax portion) and Form VAT-203 (Penalty) – Assessee preferred appeals separately before the ADC (CT), Punjagutta Division, Hyderabad [for brevity here-in-after referred to in as 'appellate authority') seeking certain relief(s) – Both the Appeals disposed-off as "Remanded" back to the assessing authority with certain conclusive observations and subsequent directions – Examination made of both the Appeal Orders – Necessary action was processed as to give consequential effect to the tax portion and accordingly Revised Assessment Order passed – Now giving necessary effect to an extent of Penalty portion – Revised Penalty Order passed – Reg.

REF:-1.Proceedings of the Assistant Commissioner (ST), M.G.Road-S.D.Road Circle in Form VAT-305 dated:-13.07.2022 for the tax periods of 07/2015 to 06/2017 under TVAT Act, 2005 vide A.O.No.17546 (as regards tax portion).
2.Proceedings of the Assistant Commissioner (ST), M.G.Road-S.D.Road Circle in Form VAT-203 dated:-13.07.2022 for the tax periods of 07/2015 to 06/2017 under TVAT Act, 2005 vide A.O.No.17547 (as regards Penalty portion).
3.Proceedings of the Appellate Deputy Commissioner (CT) [Presently re-designated as Appellate Joint Commissioner (ST)], Punjagutta Division, Hyderabad in Appeal No.BV/40/2022-23, dated:-4.03.2023 for the tax periods of 07/2015 to 06/2017 under VAT Act, 2005 vide ADC Order No.144 (as regards tax portion).
4.Proceedings of the Appellate Deputy Commissioner (CT) [Presently re-designated as Appellate Joint Commissioner (ST)], Punjagutta Division, Hyderabad in Appeal No.BV/41/2022-23, dated:-14.03.2023 for the tax periods of 07/2015 to 06/2017 under VAT Act, 2005 vide ADC Order No.145 (as regards Penalty portion).
5.This tax office Revised Assessment Order dated 24.02.2024 for the tax periods of 07/2015 to 06/2017 under TVAT Act, 2005 vide A.O.No.51 (as regards tax portion).

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M/s.Nilgiri Estates, located at located at H.No.5-4-187-3 and 4, 2nd Floor, Soham Mansion, Mahatma Gandhi Road, Secunderabad – 500 003 are registered dealers under the provisions of TVAT Act, 2005 and CST Act, 1956 with the TIN 36607622962 and assessee on the rolls of Commercial Tax Officer [presently re-designated as Assistant Commissioner (ST)], M.G.Road-S.D.Road Circle of Begumpet Division, Hyderabad. For the tax periods of 07/2015 to 06/2017 under the TVAT Act, 2005, the assessee was conducted Audit/ Scrutiny of their books of accounts and VAT records by the Assistant Commissioner (ST), M.G.Road-S.D.Road Circle and in the course of making verification of the VAT records/books of accounts of the assessee with that of the turnovers reported to the department for the purpose of ascertaining/evaluating the correctness and completeness of the turnovers reported by the assessee, they were passed an Assessment Order in Form VAT-305 (regarding the 'tax portion') vide reference 1st cited which resulted in raising a net tax due of Rs.1,57,41,135-00 and as well as a Penalty Order in Form VAT-203 (regarding the 'Penalty portion') duly raising a Penalty of Rs.39,35,284-00 i.e., 25% of the tax due of Rs.1,57,41,135-00 vide reference 2nd cited.

The assessee having disagreed with the above two orders, appealed to the Appellate Deputy Commissioner (CT) [Presently re-designated as Appellate Joint Commissioner (ST)], Punjagutta Division, Hyderabad., seeking certain relief(s). The Appellate Authority having examined the contentions raised by the appellant assessee in their grounds of appeal /(and/or) having heard the pleadings of the assessee made during the Personal Hearing /(and/or) having examined the documents / details forms so adduced against their contentions/ claims, disposed-off the appeal and passed orders vide reference 3rd and 4th cited, wherein while "REMANDING" the assessment(s) / appeal(s) back to the assessing authority, issued certain directions.

Accordingly, in the light of the directions of the appellate authority, necessary action has been initiated to give consequential effect to the tax portion in due process of law and in that process, the assessee was passed Revised Assessment Order by this tax office vide reference 5th cited, on 24.02.2024 vide A.O.No.51 wherein on or after allowing necessary relief(s) of the tax under dispute as required and necessary, it has been resulted in revised demand of Rs.1,55,44,371-00 as due to the department.

In view of this contextual circumstances, it is viewed that, it would be appropriate to quote/paraphrase here the order of remand directions of the appellate authority issued (in their own words) on the dispute with regard to the "Penalty" portion and in the course of, it has been held that,

//I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. The appellant, in the grounds of appeal, and his Authorised Representative, raised certain contentions with regard to the merits of the case placing reliance in certain case law. Without going into the admissibility or otherwise of the same, I have to observe that since the appeal filed by the appellant against the assessment to tax based on which the impugned penalty was levied, is disposed off by me as 'remanded' in Appeal No.BV/40/2022-23, dated:-14-03-2023, the levy of penalty made by the Assessing Authority also needs re-consideration. In 11-SCC-101 in the case of Pratibha Processors Vs Union of India (SC), their Lordships of the Apex Court observed that "in a fiscal statute, penalty is ordinarily levied on an assessee for some contumacious conduct or for a deliberate violation of the provisions of a particular statute". Moreover, the penalty is an appendage of the original orders and its survival depends on the main order that acts as a prop. If the prop is set-aside, the appendage's survival is in question and falls flat. Hence, in fitness of matters, I feel it just and proper to remit the matter back to the Assessing Authority, who shall pass such orders of penalty as deemed fit and warranted consequent on making of assessment to tax in pursuance of the appeal order as discussed above. With this direction, the impugned orders of penalty are set-aside on a penalty amount of ₹39,35,28409/- and the appeal thereon remanded.

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

Accordingly, herein in the light of clarificatory directives of the appellate authority respecting to the Penalty portion, viewed that, since the revised assessment proceedings on the tax portion resulted in revised demand of Rs.1,55,44,371-00 and in the course of, while keeping in view the precedents of the case, the levying Penalty @ 25% as required under the provisions of Section 53(1)(ii) of VAT Act, 2005 on the amount of tax so resulted on revision of VAT Assessment Order which amounts to Rs.38,86,093-00 relating to the tax periods of 07/2015 to 06/2017 would not amount in beyond the lawfully adjudicatable canons.

Accordingly, giving necessary effect to the expressly issued directions of the appellate authority while remanding the matter on the Penalty portion under dispute for the tax periods of 07/2015 to 06/2017 under TVAT Act, 2005 is hereby completed by this subjected-to Revised Penalty Proceedings duly levying Penalty of Rs.38,86,093-00 on the above revised tax demand @ 25%. In this course of, the amount of net Penalty after giving due credit of the amount of Penalty paid during the appeal is arrived at as under "

Amount of Penalty resulted on this Revision Proceedings of the Penalty portion	Rs.38,86,093-00
Less : Amount of Penalty paid during the Appeal at 12.5% of the disputed Penalty vide Challan No.1800525061, dated:-10.08.2018.	Rs. 4,91,911-00
Net amount of Penalty payable	Rs.33,94,182-00

The dealer shall pay above penalty for an amount of **Rs.33,94,182-00** for tax period from 07/2015 to 06/2017 within (15) days of receipt of this order. Failure to make the payment will result in recovery proceedings under the AP VAT Act 2005.

NOTE : An appeal against this order lies before the Appellate Joint Commissioner (ST), Punjagutta Division, Hyderabad within (30) days from the date of receipt of this Order.

ASSISTANT COMMISSIONER (ST),
M.G.ROAD-S.D.ROAD CIRCLE.

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

To,
M/s.Nilgiri Estates,
located at located at H.No.5-4-187-3 and 4,
2nd Floor, Soham Mansion, Mahatma Gandhi Road,
Secunderabad – 500 003.

Copy submitted to the Joint Commissioner (ST), Begumpet Division, Hyderabad.