

GOVERNMENT OF TELANGANA
COMMERCIAL TAXES DEPARTMENT

Office of the
ASSISTANT COMMISSIONER (ST),
M.G.Road-S.D.Road Circle,
D.No.6-3-789, 4th Floor,
Pavani Prestige Complex,
Near Bus Stop, Main Road,
Ameerpet, Hyderabad - 500 016.

TIN : 36607622962

Date : 11.09.2023

Years/Act : 7/2015 to 06/2017 (VAT)

PRE-REVISION SHOW CAUSE NOTICE UNDER VAT ACT,2005

SUB : VAT 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 - Assessee preferred an appeal before the ADC (CT), Punjagutta Division, Hyderabad [for brevity here-in-after referred to in as 'appellate authority'] seeking certain relief(s) of the turnover(s) or tax(es) pre-determined/pre-assessed - Appeal disposed-off as "REMANDED" back to the assessing authority with certain conclusive observations and subsequent directions - Examination made of the Appeal Order - Issue of Pre-Revision Show Cause Notice calling for certain details/ documents/ statements and etc - 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.

2.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 14.03.2023 for the tax periods of 07/2015 to 06/2017 Under VAT Act, 2005 vide ADC Order No.144.

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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 vide reference 1st cited, with the following determinations.

Total Turnover (July' 2015 to June' 2017)	Rs. 27,33,22,717-00
Delete Turnover will be assessed under GST	Rs. 11,30,00,555-00
Turnover assessed under TVAT	Rs. 16,03,22,162-00

Standard Deduction @ 30% as per Rule 17(1)(g)	Rs. 4,80,96,649-00
Taxable Turnover	Rs. 11,22,25,513-00
Tax @ 14.5%	Rs. 1,62,72,699-00
Tax paid	Rs. 5,31,564-00
Balance payable	Rs. 1,57,41,135-00

The assessee have stated that they have made payments to a tune of Rs. 9,70,001-00 but failed to file challan copies inspite of repeated telephonic messages. Hence, tax payment as per VATIS is considered.

In view of the above orders are passed and tax payable by the dealer to the department is Rs. 1,57,41,135-00.

Before finalizing the above, the reply filed by the assessee and style of examination of that reply by the audit officer was held as under (the same is reproduced as is below) :

//In the reply filed by the dealer, the dealer stated that, they have filed manually VAT 250 and copy of which is not traceable. Further they have stated that, they have paid tax @ 1.25% on consideration received and not taken ITC, these two points speaks the fact that they had opted for composition. The dealers contention are rejected for the following reasons:

- a) The dealers are registered w.e.f. 01.07.2015 under TVAT Act' 2005. Since 2012 onwards filing of Form VAT 250 electronically in VATIS portal was implemented. So all the dealers are filing their Form VAT 250 through VATIS only i.e., Online.
- b) Even though if it is treated that the dealer is ignorant of this fact, they must produce the copy of VAT 250 which has claimed by them that they filed manually, but the dealers failed to do so.

Hence it is treated that they have not opted for composition under Sec 4(7)(d) simply paying tax @ 1.25% and not taking ITC does not prove that they opted for composition. Sec. 4 (7) (d) clearly says that to pay tax @ 5% on 25% of the amount received the dealer shall opt to pay tax under composition.

In view of the above the dealer's contentions are not considered. Hence the tax is calculated under Sec 4(7)(a). Further the dealers not produced any books of account. Hence, in the absence of the books of account tax is calculated under Rule 17(1)(g) by giving standard eligible deductions.

Further the dealer in their reply stated that Rs. 11,30,00,555-00 was received as advances and construction work was not yet started. Hence, this turnover is deleted from the VAT Assessment which will be assessed under GST Act' 2017. The dealer was also granted personal hearing Sri Jayaprakash, Manager (Finance Acts) of the assessee company appeared for personal hearing on 06.04.2018 and stated the same facts which were already replied in the above paras. //

The assessee having disagreed with the above assessment order appealed to the Appellate Joint Commissioner (ST), Punjagutta Division, Hyderabad seeking certain relief(s) of the pre-determined/assessed turnover(s) or tax(es). 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/statutory forms so adduced against their contentions/ claims, disposed-off the appeal and passed orders vide reference 2nd cited, wherein while "REMANDING" the assessment / appeal back to the assessing authority, issued certain directions. The observation(s) so made and the resultant determinative expressions/ conclusions so arrived-at by issuing

certain directions by the appellate authority in the referred appeal order are reproduced as is hereunder as a part of having more relevance and clarity on the impugned subjects/ contentious issues / claims of the assessee and in addition thereto, also in order of processing the consequential action more legitimately, appropriately and reasonably:-

// Sri M. Ramachandra Murthy, Advocate and Authorised Representative of the appellant appeared and argued the case reiterating the contentions as set-forth in the grounds of appeal and pleaded for setting-aside of the impugned orders.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. The assessment of the appellant for the disputed tax periods was completed by the Commercial Tax Officer, Maredpally Circle, Hyderabad (hereinafter referred to as the Audit Officer) vide orders dated 23-04-2018 in A.O.No.17546. Aggrieved with the said orders, the appellant preferred an appeal in this office disputing the determination of turnovers on account of execution of works contract and consequential levy of tax thereon. The said appeal was disposed-off by me vide appeal orders in Appeal No.BV/26/2018-19 (ADC Order No.432), dated 27-02-2019 as remanded for passing of fresh orders with the following observations and directions:

"From the above provisions, it is to be concluded that in order to avail the benefit of composition of tax at 1.25% by a dealer engaged in construction and selling of residential apartments / houses, such dealer not only have to get themselves enrolled as a VAT dealer under the provisions contained under the TVAT Act, but also notify the prescribed authority on Form VAT 250 of their intention to avail such composition on the works so done. In the case on hand, there is no dispute in the fact that the appellant neither opted to pay tax by way of composition duly filing Form 250 as prescribed through online nor furnish any sort of documentary evidence to prove that they have filed such Form VAT 250 manually. Such being the case, the claim of the appellant that their turnovers are to be assessed under Section 4(7)(d) of the TVAT Act cannot be sustained. Consequently, the same are rejected as devoid of merit.

Coming to the alternative plea of the appellant even if their turnovers are not to be considered under the provisions contained under Section 4(7)(d) of the TVAT Act, since they are maintaining the books of account correctly wherefrom the value of goods at the time of incorporation and other labour and service charges were very much ascertainable, their turnovers are to be determined under Section 4(7)(a) of the TVAT Act read with Rule 17(1)(e) of the TVAT Rules; it is necessary to take note of the provisions contained under Section 4(7)(a) of the TVAT Act governing the levy of tax on the works contracts, which reads as under:

"(a) Every dealer executing works contract shall pay tax on the value of goods at the time of incorporation of such goods in the works executed at the rates applicable to the goods under the Act.

Provided that where accounts are not maintained to determine the correct value of goods at the time of incorporation, such dealer shall pay tax at the rate of 14.5% on the total consideration received or receivable subject to such deductions as may be prescribed."

As per the above provisions, clause (a) of Section 4(7) prescribes that a dealer executing works contract has to pay tax on the value of goods at the time of

incorporation into the works at the rates applicable to such goods under the Act and in such case the said dealer is eligible for deductions as prescribed under the relevant Rules i.e., Rule 17(1)(e) of the TVAT Rules, besides eligible for input tax credit at 75% as per Section 13(7) of the said Act. However, as per the proviso appended to the above clause, where a dealer did not maintain the accounts so as to ascertain the value of goods at the time of incorporation in the works, such dealer has to pay tax at the rate of 14.5% during the disputed tax periods on the total consideration received or receivable subject to such deductions as may be prescribed. Such prescription is made under Rule 17(1)(g) of the TVAT Rules which provides for deduction at different percentages relatable to the nature of contracts executed and in such a situation, the said dealer is not eligible to claim input tax credit.

In support of the contentions raised, in this regard, the Authorised Representative also furnished certain documentary evidence like copies of Trial Balance, copies of Profit & Loss Accounts, copies of Income Tax returns etc., and expressed the appellant's readiness to produce the same along with books of account and other relevant documentary evidence before the Assessing Authority as and when called for and pleaded for an opportunity to do so.

For the facts and reasons discussed above and since the Audit Officer has rejected the claims of the appellant, in this regard, on the ground that the appellant had not produced the books of accounts and also having regard to the fact that the appellant now expressed their readiness to produce the books of account and other relevant documentary evidence / related records as and when called for; I feel the issue involved herein required re-consideration at the Assessing Authority's end. Hence, in fitness of matters, I feel it just and proper to remit the matter back to the Assessing Authority, who shall verify the claims of the appellant with reference to the books of account and other relevant and related documentary evidence / records that would be produced by the appellant and pass orders afresh granting necessary relief to the appellant to the extent they are eligible for in accordance with the provisions of law, duly bearing in mind my observations made above and also after giving the appellant a reasonable opportunity to present their case."

To give effect to the above appeal orders, the Assessing Authority issued notice and on observation that though the reminder notices were issued the appellant failed to file their objections / documentary evidence, the Assessing Authority passed the impugned consequential assessment order confirming the levy of tax as was done in the original assessment order.

The claim of the appellant is that the Assessing Authority is not justified in passing the impugned order confirming the levy of tax as was done in the original assessment order without providing a reasonable opportunity to the appellant to file their objections along with the relevant documentary as was directed by the Appellate Authority even though there is a sufficient time available to pass the effectual orders. It is further explained that at the time when the notices were issued by the Assessing Authority, the person who is looking after the sales tax matter was not attending the office due to illness which resulted in non-responding to the notices issued and as such the non-responding to the notices issued was neither willful nor deliberate on the part of the appellant but due to the circumstances beyond their control. The Authorised Representative, however, stated that the appellant is now ready to produce the relevant documentary evidence as and when called for and pleaded for an opportunity to do so.

For the reasons discussed above and having regard to the readiness of the appellant to produce the relevant documentary evidence as and when called for, more particularly keeping in view the principles of natural justice, I feel it just and proper to remit the matter back to the Assessing Authority, who shall provide an opportunity to the appellant to file their objections along with relevant documentary evidence, if any, consider and examine the same in the light of the remand directions contained in the appeal order referred to above and pass orders afresh in accordance with the provisions of law, after giving the appellant an opportunity of being heard. With this direction, the impugned order is set-aside on the disputed tax amounting to ₹1,57,41,135/- and the appeal thereon remanded.

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

In the light of the observations made and resultant directions issued expressly by the appellate authority in the course of disposing off the appeal as supra, it is as a part of giving consequential effect to the remand directions of the appellate authority in due process of law, the assessee by this proposed or subjected-to Pre-revision Show Cause Notice is hereby directed to produce the following documents/statements/details/statutory forms / evidential case details for the tax periods of 07/2015 to 06/2017 under VAT Act, 2005 for making due and proper examination of the claims of the assessee/issues under dispute with those evidence in an appropriate manner and allow necessary relief to an extent found they are eligible or to an extent found to be capable of being granted necessary relief without prejudice to the generality of the provisions.

- a) A detailed clarificatory statement as regards to the precedents of the case / precedents of the point(s) at issue so under dispute-cum-covered by remand directions of the appellate authority and as well as all the relevant and appropriate corroborative and supporting evidence of the points/issues they objected.
- b) In addition there-to of the details sought of the issues under dispute, the assessee is further hereby requested to produce the details of tax paid if any during the trial of case before the appellate authority & etc.,

Concluding this subjected-to Pre-Revision Show Cause Notice, the assessee M/s.Nilgiri Estates, Secunderabad are hereby requested to produce the above-mentioned documents/statutory forms/information within (15) days from the date of receipt of this Notice; failing which, necessary orders as deemed fit in accordance with the law will be passed without any further notice or communication.

NOTE : The assessee in this juncture is further informed that, if any of the above named documents/statements/statutory forms were already submitted in the tax office in the light of the remand directions of the appellate authority, a copy of acknowledgment of those submission(s) as proof of the submission may please be produced at once before the undersigned which enable this office to verify the same with the office records and allow necessary relief in accordance with law.

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


ASSISTANT COMMISSIONER (ST),
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