

Date: 15th March 2024

To
The Assistant Commissioner (ST)(FAC)
MG/SD Road Circle,
Begumpet Division
Hyderabad.

Sir,

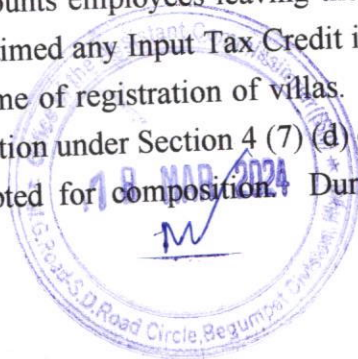
Sub: TSGST/VAT Act'2005 – Nilgiri Estates, Secunderabad – Show Cause Notice for produce the books of accounts against Appeal Remanded – Reply submitted – Reg.

Ref: ADC Order No. 144 dated 14.03.2023 vide Appeal No. BV/140/2022-23 Order Passed by Appellate Deputy Commissioner, (CT) Panjagutta Division.
Your Letter dated 18.05.2023 towards production of Books of Accounts.
Pre-Revision of Show Cause Notice under VAT Act 005 dated. 11.09.2023

We submit that we are in receipt of the showcasue notice of assessment of VAT dated 11.09.2023 issued under the provisions of the TVAT Act, 2005 (for short Act) for the period from July'15 to Jun'17 proposing to demand tax of Rs.1,57,41,135. We request to kindly consider our objections on the following grounds:-

We are registered VAT dealer on the rolls of the CTO, MG Road Circle, Hyderabad. We have commenced business with effect from 1.7.2015. We are engaged in the business of constructing and selling villas. It has been observed in the notice that we have not opted to pay tax under composition scheme and that therefore we have to pay tax under Section 4 (7) (a) of the Act read with Rule 17 (1) (g) of the VAT Rules. GO Ms. No.124 Revenue dated 30.6.2017 has also been mentioned by stating that we have to pay tax on the consideration received. Accordingly tax of Rs.1,57,41,135 has been proposed to be levied.

At the outset we submit that computation for arriving at the above tax due has not been mentioned in the notice. Be that as it may, we submit that at the time of commencement of business, we had filed form VAT 250 manually in the office of the CTO, MG Road Circle opting for composition under Section 4 (7) (d) of the Act and we are not able to trace the acknowledged copy due to the concerned Accounts employees leaving the firm. In support of this averment, we submit that we had not claimed any Input Tax Credit in the returns filed by us. We have paid VAT @ 1.25% at the time of registration of villas. These two points speak to the fact that we had opted for composition under Section 4 (7) (d) of the Act. Hence it is not correct to state that we had not opted for composition. During the period of



assessment we sold and registered the villas. The following is the sale consideration received by us on such registration.

Description	Turnover	VAT Payable 2 Sec.4(7)(d)	VAT Paid
Declard Turnover in Form 200	7,74,50,000	9,70,001	9,70,001
Advance Received	16,12,80,000	20,14,124	-
Total Receipts received from Customers	23,87,30,000	29,84,125	9,70,001
Balance Amount VAT Payable			20,14,124
Disputed Tax Paid			19,67,642
Disputed Tax Paid			4,91,911
Balance Payable			(4,45,429)

Appellant submits that when the appellant has sincerely affirmed before the learned CTO that Form VAT 250 filed manually could not be traced, as the same was filed in the year 2015 at the time of commencement of business i.e. 01-07-2015. The learned CTO ought to have understood that the appellant ought not have paid tax @1.25% on the total receipts unless it has filed Form VAT 250 which is also evidenced by the fact that he has not claimed input tax credit. It follows from this that the learned CTO has hastily concluded assessment proceedings

In any case it is submitted that filing of Form 250 is only an intimation that the appellant intends to discharge his tax liability on the turnover relating to construction and selling of villas/apartments under composition method. All the other conditions that are required to be followed for claiming the benefit of composition scheme have been duly followed by the appellant such as non-claiming of input tax credit, paying tax @ 1.25% at the time of registration of the villas etc. The appellant therefore submits that he has opted for composition scheme for payment of VAT.

It is respectfully submitted that even under the present GST period, filing of TRAN 1 is to be made online. But in the case of Hon'ble Allahabad High Court Judgment in M/s.Vihan Motors, Muzafarnagar TRAN 1 is filed manually and requested the GST department to give credit for the tax which they are eligible as per law. On refusal to give credit the dealer filed writ petition before the Honourable High Court and the Honourable High Court in Writ Tax No.774/2018 has given a direction to the respondents to process the manual claim of credit filed by the petitioner in accordance with law. The appellant therefore submits that filing of Form VAT 250 is required to be considered. Filing of form VAT 250 is only procedural in nature. Such filing can be evidenced through other means also.

Without prejudice to the above contentions it is submitted that levy of tax on the appellant by following Rule 17 (1) (g) is not correct as the appellant even in reply to the show cause notice

has categorically mentioned that they are maintaining the regular books of accounts and based on the books the net tax liability has to be arrived. However the assessing authority without properly considering this plea of the appellant has passed the impugned proceedings which are therefore bad in law and are against the principles of natural justice. The appellant submits that the tax liability under the VAT Act is required to be calculated by following the procedure prescribed under Rule 19 of the TVAT Rules.

Without prejudice to the above we submit that we have maintained detailed accounts and all kinds of required information could be easily culled out from the books of account. In the event of levy of tax under Section 4 (7) (a) of the Act, we shall automatically become eligible for Input Tax Credit. This is submitted only as an alternative contention, as we have filed form VAT 250.

Calculation as per Section 4(7)(a)

Description	Amount	
Total Receipts received from Customers		20,15,07,190
Less :		
Exempted Turnover (Land Value)		9,56,81,088
Taxable Receipts		10,58,26,102
Less :		
Deduction of Service Charges		5,76,82,238
Net Taxable Receipts		4,81,43,864
VAT Payable @14.5% (Sec. 4(7)(a))		69,80,860
VAR Paid as per Form 200	9,70,001	
ITC against purchase (75%)	46,82,216	
Pre-Deposit made at a time of ADC Appeal	19,67,642	
Pre-Deposit made at a time of ADC Appeal	4,91,911	
Total adjusted Amount		81,11,770
Balance Payable		(11,30,910)

We request to kindly consider these objections and drop the proposed levy. We also request to afford us an opportunity of personal hearing before conclusion of the proceedings.

Kindly acknowledge for the same

Thanking you

Yours faithfully
For NILGIRI ESTATES

Authorised Signatory

