

M.RAMACHANDRA MURTHY  
CHARTERED ACCOUNTANT

Flat No.303, ASHOKA SCINTILLA  
H.No.3-6-520, Opp. Malabar Gold,  
Himayathnagar Main Road,  
Hyderabad -500 029  
Tel.:040-40248935 / 36

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

Date: 22/05/2018

Sir,

Sub:- Filing the appeal in the case of M/s. Nilgiri Estates, M.G.Road, Secunderabad, -  
For the assessment period July'15 to June'17/VAT- reg.

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Please find enclosed herewith the following appeal papers:

1. Form – APP 400                      2 copies.
2. Grounds of Appeal                2 copies.
3. Challan bearing No.1800332609 dt. 22/05/2018 for Rs.1000/- towards appeal fees.
4. Assessment of Value Added Tax in Form VAT 305 order passed by the Commercial Tax Officer, Marredpally Circle Hyderabad, dated. 23/04/2018 (in original) along with xerox copy.
5. Copy of proof of the payment of E-payment of the 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.



**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, 2<sup>nd</sup> Floor,  
Soham Mansion, M.G. Road,  
Secunderabad.
4. I wish to appeal the following decision /  
assessment received from the tax office on : 23/04/2018
5. Date of filing of appeal : 24/05/2018
6. Reasons for delay (if applicable enclose a  
separate sheet : Not Applicable
7. Tax Period / Tax Periods : July'2015 to June'2017/VAT
8. Tax Office decision / assessment Order No. : Assessment of Value Added Tax in  
Date. Form VAT 305 order dt.23/04/2018  
passed by Commercial Tax Officer,  
Marredpally Circle, 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 : NIL
- If rate of tax is disputed
- a) Turnover involved : Rs.16,03,22,162-00
- b) Amount of tax disputed : Rs.1,57,41,135-00
11. 12.5% of the above disputed tax paid : Rs.19,67,642/-
- Note:** Any other relief claimed : Other grounds that may be urged at the  
time of hearing.

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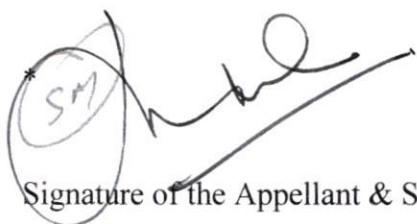
(The payment particulars are to be enclosed if ready paid along with the reasons on Form APP 400A)

12. Payment Details:

|                             |   |       |
|-----------------------------|---|-------|
| a) Challan / Instrument No. | : |       |
| b) Date                     | : |       |
| c) Bank / Treasury          | : |       |
| d) Branch Code              | : |       |
| e) Amount                   | : |       |
|                             |   | ----- |
| <b>TOTAL</b>                | : |       |
|                             |   | ----- |

**Declaration:**

I, SOHAM MODI, Managing Director 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.

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**APPLICATION FOR STAY OF COLLECTION OF DISPUTED TAX**

[Under Section 31(2) &amp; 33(6) ] [ See Rule 39(1) ]

Date Month Year

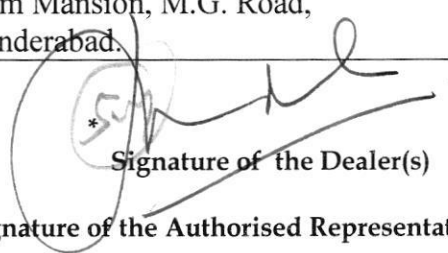
01. Appeal Office Address:  
To,  
The Appellate Deputy Commissioner (CT)  
Punjagutta Division, Hyderabad

|    |    |      |
|----|----|------|
| 22 | 05 | 2018 |
|----|----|------|

|    |     |             |
|----|-----|-------------|
| 02 | TIN | 36607622962 |
|----|-----|-------------|

03. Name M/s. Nilgiri Estates,  
Address: 5-4-187, 3&4, 2<sup>nd</sup> Floor,  
Soham Mansion, M.G. Road,  
Secunderabad.

|     |                                                                   |                                                                                                                                    |
|-----|-------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| 04. | Tax period                                                        | July'2015 to June'2017/VAT                                                                                                         |
| 05. | Authority passing the order or proceeding disputed.               | Assessment of Value Added Tax in Form VAT 305 order dt.23/04/2018 passed by Commercial Tax Officer, Marredpally Circle, Hyderabad. |
| 06  | Date on which the order or proceeding was Communicated.           | 23/04/2018                                                                                                                         |
| 07. | (1) (a) Tax assessed                                              | Rs.1,57,41,135/-                                                                                                                   |
|     | (b) Tax disputed                                                  | Rs.1,57,41,135/-                                                                                                                   |
|     | (2) Penalty / Interest disputed                                   | NIL                                                                                                                                |
| 08  | Amount for which stay is being sought                             | Rs.1,57,41,135/-                                                                                                                   |
| 09. | Address to which the communications may be sent to the applicant. | M/s. Nilgiri Estates,<br>5-4-187, 3&4, 2 <sup>nd</sup> Floor,<br>Soham Mansion, M.G. Road,<br>Secunderabad.                        |



Signature of the Dealer(s)

Signature of the Authorised Representatives if any

## 10. GROUNDS OF STAY

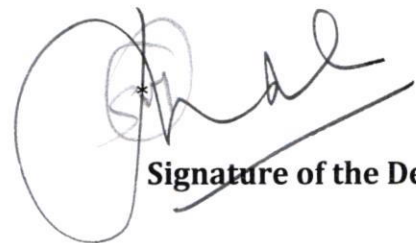
- 1.) Substantial question of facts and law that may arise in the appeal.
- 2.) The appellant will be hard hit if it is called upon to pay this heavy amount of tax pending disposal of the appeal.
- 3.) The grounds that are stated in the main appeal may kindly be read as grounds of this appeal.

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.1,57,41,135/- pending disposal of the appeal.

### VERIFICATION

I, Soham Modi, Managing Director applicant (s) do hereby declare that what is stated above is true to the best of my / our knowledge and belief.

Verified today the 22<sup>nd</sup> day of May'2018



Signature of the Dealer(s)

Signature of the Authorised Representatives if any

**Nilgiri Estates**

5-4-187/3 & 4, II Floor, Soham Mansion, M.G. Road, Secunderabad

Tax Period: July, 2015 to June, 2017/VAT

**Statement of Facts:-**

- 1) The appellant is a registered VAT dealer engaged in the business of construction and selling of independent residential villas and is an assessee on the rolls of the CTO, MG Road Circle, Hyderabad with TIN36607622962. The appellant opted to pay tax @ 1.25% under Section 4 (7) (d) of the TVAT Act, 2005 (hereinafter referred to as Act) under composition scheme.
- 2) In the course of business the appellant enters into agreement with their prospective buyers for sale of villas along with certain amenities. The agreement of sale which is the mother or initial agreement consists of the consideration received through sale of land and cost of construction of the entire villa. The appellant has paid VAT @ 1.25% on the total consideration received from these two components of the agreement.
- 3) Claiming authorization from the DC (CT), Begumpet division the CTO, Marredpally Circle (for short CTO) issued notice of assessment in Form VAT 305 A dated 07-03-2018 proposing tax of Rs.2,47,28,037/- on the contractual receipts under Section 4 (7) (a) read with Rule 17 (1) (g) of VAT Rules by allowing standard deduction during the tax period July, 2015 to June, 2017.



- 4) The appellant has filed detailed objections to the show cause notice by claiming that they are liable to tax under Section 4 (7) (d) of the Act only and not under Section 4 (7) (a) of the Act. However without properly considering the objections filed the learned CTO confirmed the proposed levy under Section 4 (7) (a) read with Rule 17(1)(g) after allowing standard deduction of 30% on a turnover of Rs. 16,03,22,162/- demanding a tax of Rs. 1,57,41,135/-.
- 5) Aggrieved by the said order appellant prefers this appeal on the following grounds, amongst others:-

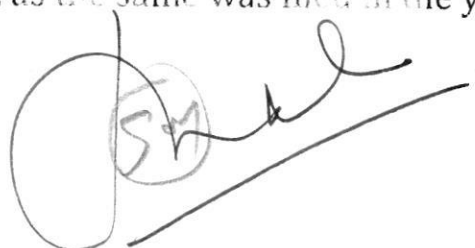
**GROUND OF APPEAL:**

- a) The impugned order is highly illegal, arbitrary, unjustifiable and contrary to facts and law.
- b) Appellant submits that the learned CTO issued a notice of assessment that the appellant has not opted for composition by filing Form VAT 250 and in the absence of detailed books of account the appellant is proposed to be taxed under Section 4 (7) (a) read with Rule 17 (1) (g) by allowing standard deduction. The learned CTO has not shown computation for arriving at the tax of Rs. 2,42,33,973/- in the notice even though he has extracted the turnovers as per the returns and as per the books.
- c) In the reply submitted the appellant has clearly stated that at the time of commencement of business, it has filed form VAT

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250 manually in the office of the CTO, MG Road Circle opting for composition under Section 4 (7) (d) of the Act (Photo Copy enclosed). In the reply filed to the notice the appellant has clearly stated that the appellant could not trace out the original acknowledged copy, as the concerned accounts employees have left the firm and that it has paid VAT @1.25% at the time of registration of villas/flats and further that it has not claimed any Input Tax Credit in the returns filed. The appellant has submitted VAT paid details with. The appellant has also submitted that it has maintained all books of account and as such the appellant may be taxed under Section 4 (7) (a) by allowing input tax credit. Though original acknowledged copy of form VAT 250 could not be traced (Photo copy enclosed), still the circumstantial evidence i.e., paying tax @ 1.25% and non-claim of ITC, would amply prove that the appellant has opted for composition scheme.

- d) The learned CTO in the assessment order stated that onward filing of Form VAT 250 electronically was implemented since 2012 and if the appellant is ignorant of this facility, it must produce the copy of VAT 250, but it had failed to file a copy of Form VAT 250. The learned CTO proceeded to levy tax under Section 4(7) (a) under standard deduction method only on the ground that the appellant failed to file Form VAT 250.
- e) 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.

- f) 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.
- g) 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.

- h) 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.
- i) In view of the above grounds and other grounds that may be urged at the time of hearing the appellant prays the Honourable Appellate Deputy Commissioner to set aside the impugned order of the learned CTO as illegal and allow the appeal.



(APPELLANT)