

(MC)

PROCEEDINGS OF THE APPELLATE DEPUTY COMMISSIONER(CT),
PUNJAGUTTA DIVISION, HYDERABAD

PRESENT: SMT. Y. SUNITHA,

ADC Order No.1332

Date of hearing:03-11-2018

Stay Application R.No.14/2018-19

Date of order :09-11-2018

in Appeal No.BV/26/2018-19

Sub:- APPEALS – TVAT Act – M/s Nilgiri Estates,
Hyderabad – Appeal filed against the orders of
the Commercial Tax Officer, Maredpally Circle,
Hyderabad – Assessment for the tax periods
July, 2015 to June, 2017 – Stay petition heard -
Stay rejected – Orders issued – Regarding.

* * *

M/s Nilgiri Estates, Hyderabad (TIN: 36607622962), the appellant herein, filed an appeal against the assessment orders dated 23-04-2018 (AAO No.25460) passed by the Commercial Tax Officer, Maredpally Circle, Hyderabad (hereinafter referred to as the Audit Officer) for the tax periods from July, 2015 to June, 2017 under the TVAT Act. The appellant also filed a petition in Form APP 406 seeking stay of collection of the disputed tax of ₹1,57,41,135/-.

Sri M. Ramachandra Murthy, Chartered Accountant 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 stay of collection of the disputed tax.

I have heard the Authorised Representative and gone through his contentions as well as the contents of the impugned orders. In the

impugned orders, while considering the objections filed by the appellant, which are similar to the ones that are now raised in the grounds of appeal, the Audit Officer observed as under:

"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 dealers 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."

From the above, it is to be observed that while the Audit Officer determined the turnovers of the appellant for the purpose of levy of tax under Section 4(7)(a) of the TVAT Act read with Rule 17(1)(g) of the TVAT Rules on the ground that the appellant had neither furnished proof of filing of Form 250 nor produced the books of account, the appellant

except raising contentions, failed to contradict such findings of the Audit Officer with supporting documentary evidence and to support their contentions. For these reasons, I do not find any case to grant stay of collection of the disputed tax of ₹1,57,41,135/- and accordingly the stay petition is rejected.

APPELLATE DY.COMMISSIONER(CT),
PUNJAGUTTA DIVISION, HYDERABAD.

To
The Appellants.

Copy to the Commercial Tax Officer, M.G.Road Circle, Hyderabad.

Copy to the Commercial Tax Officer, Maredpally Circle, Hyderabad.

Copy to the Dy.Commissioner(CT), Begumpet Division, Hyderabad.

Copy submitted to the Additional Commissioner(CT) Legal, and Joint Commissioner(CT), Legal, Hyderabad.

NOTE: A Revision Petition against this order lies to the Joint Commissioner(CT) Legal, Telangana, Hyderabad within (30 Thirty days) from the date of receipt of this order.