

M.RAMACHANDRA MURTHY
CHARTERED ACCOUNTANT

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To
The Secretary,
Telangana VAT Appellate Tribunal,
Hyderabad

Dated: 29-04-2019.

Sir,

Sub: TVAT Act.,1956 - Filing of Appeal in the case of M/s. **Nilgiri Estates**
Hyderabad – For the tax period from July, 2015 to June, 2017/VAT –
Regarding.

Please find enclosed herewith the following appeal papers:

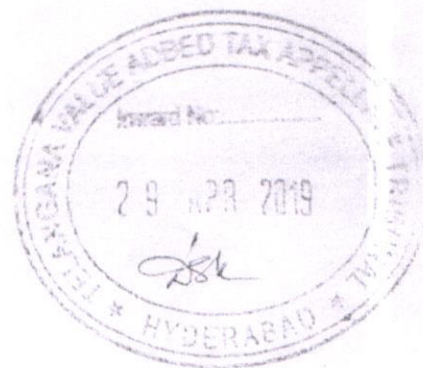
1. Form –APP 401 4 copies.
2. Facts of the case and grounds of appeal 4 copies.
3. Challan bearing No.1900264359 dt.29-4-2019 for Rs.2000/- towards appeal fees.
4. ADC Order No.432 dated 27-02-2019 passed by Appellate Deputy Commissioner(ST), Punjagutta Division, Hyderabad (in original along with Xerox copies)
5. Four copies of Assessment Order No.25460 in Form VAT 305 dt. 23-04-2018 Passed by the Commercial Tax Officer, Maredpalle Circle, Hyderabad.
6. Copy of the Letter Relating of Proof of Payment of 50% of disputed tax.
7. 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





E-Receipt	
TG Cyber Treasury-epayment of Taxes	
Bank Reference No	IK0AAOALI2
Transaction date & time	29/04/2019 12:39:12 PM
challanno	1900264359
deptcode	2303
depttransid	36190429823038
Head of Account	0040001020005000000NVN
Amount	Rs.2000.00 /-
Transaction Status	Success

FORM APP 401
FORM OF APPEAL MEMORANDUM TO THE APPELLATE TRIBUNAL
[Under Section 33] [See Rule 44(1) (a)]

Telangana Value Added Tax Appellate Tribunal at Hyderabad

No..... of 2019....

M/s. Nilgiri Estates, 5-4-187, 3&4, 2nd Floor. Soham Mansion, M.G. Road,
Secunderabad Appellant (s)

Versus

State of Telangana..... Respondent

- | | |
|---|--|
| 1. Name, address and TIN/GRN
No. of the Dealer | : M/s. Nilgiri Estates,
5-4-187, 3&4, 2 nd Floor,
Soham Mansion, M.G. Road,
Secunderabad.
36607622962 |
| 2. Tax period / Tax periods | : July'2015 to June'2017/VAT |
| 3. Authority passing the original order
in dispute | : Commercial Tax Officer,
Mareedpally Circle, Hyderabad |
| 4. Appellate Deputy Commissioners of
Commercial Taxes passing the order under
Section _____ or the Deputy Commissioner
or Joint Commissioner (Commercial Taxes)
Legal, passing an order under Section _____ | : Appeal order No.432 dt.27/02/2019
passed by Appellate Dy. Commissioner (CT),
Punjagutta Division,
Hyderabad. |
| 5. Date of Communication of the order now
appealed against. | : 28/02/2019 |
| 6. Address to which notice may be sent
to the Appellant. | : M/s. Nilgiri Estates,
5-4-187, 3&4, 2 nd Floor,
Soham Mansion, M.G. Road,
Secunderabad. |
| 7. Address to which notices may be
sent to the Respondent.
Tribunal | : State Representative before the
Telangana Value Added Tax Appellate

Hyderabad. |
| 8. Relief claimed in appeal | |
| (a) Taxable turnover determined by the
assessing authority passing the | : NIL |

assessment order disputed.

- (b) Taxable turnover confirmed by Appellate : NIL
Deputy Commissioner of Commercial
Taxes or by Deputy Commissioner or
Joint Commissioner (Commercial
Taxes) as the case may be.

(c) If taxable turnover is disputed

- (i) Disputed taxable turnover : NIL
(ii) Tax due on the disputed taxable turnover : NIL

(d) If rate of tax is disputed

- (i) Taxable turnover involved : NIL
(ii) Amount of tax : NIL

- e) Specify, if any, other relief claimed. : 1) To direct to allow the appeal,
instead of remanding the ADC
order.
2) Other grounds that may be
urged at the time of hearing.

9. 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, development charges of land and cost of construction of the entire villa. The appellant has paid VAT @ 1.25% on the total consideration received from these three 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 the appellant filed an appeal before the ADC, Panjagutta Division praying to consider the composition rate of tax of 1.25% on the total consideration received towards constructing and selling of Villas. The appellant has also taken an alternative plea to set-

aside the levy of tax which was levied by following Rule 17(1)(g) of T VAT Rules as the appellant maintains regular books of accounts. However, the ADC has already heard the case on 27-2-2019 and has set-aside the levy made by the Assessing Authority and remanded the appeal to the assessing authority with a direction to consider books of accounts and levy tax under Section 4(7)(a) of the VAT Act, 2005.

- 6) Aggrieved by the said remand order of the ADC, the appellant preferred the present appeal on the following grounds and the other grounds that may be urged at the time of hearing.

Grounds of Appeal

- a) The impugned order is 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 250

manually in the office of the CTO, MG Road Circle opting for composition under Section 4 (7) (d) of the Act. In the reply filed to the notice the appellant has clearly stated that the appellant could not trace out the 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 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 acknowledged copy of form VAT 250 could not be traced, still the circumstantial evidence ie., 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 Hon'ble High Court and the Hon'ble 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) The appellant submits that for the sole reason of non-filing of intimation in Form VAT 250 online prior to commencement of execution of works contract, the benefit of composition scheme cannot be denied. In this regard the appellant relies on the decision of the Customs & Central Excise and Services Tax Appellate Tribunal, the Principle Bench, New Delhi in the case of M/s Vishnu Associates Vs CCF (ST) Jaipur (copy of the judgment is herewith enclosed). In this case the appellant is engaged in the business of execution of works contract and the Assessing Authority denied the benefit of composition rate of tax to the assessee for the reason that the assessee has failed to file an intimation to the Department opting for the payment of Service Tax in the Composition Scheme prior to making payment of Service Tax as required under the Service Tax Rules. However, the Tribunal by following the decisions of Mumbai CESTAT held that the assessee will be entitled to the benefit of Composition Scheme even if the option is exercised at a later date. The ratio laid down in the judgment is equally applicable to the present case of the appellant.

i) The scheme of composition under the T VAT Act and under APGST Act are different. In the case of Composition Scheme under APGST Act the dealer who desires to opt tax under composition rate of tax is required to make an application in Form-L to the Assessing Authority and on satisfaction of the Assessing Authority, the dealer will be issued permission in Form-LI for getting the benefit of concessional rate of tax. However, under the APGST Act there is no

necessity to make an application and to receive permission from the Department to opt for composition rate of tax. Under the APVAT Act the dealer is required to make an intimation in Form-VAT 250 and the dealer will be entitled to claim the benefit of Composition Scheme. Even though such intimation in the present case of the appellant has been done manually, the Assessing Authority has not considered the same for the reason that the same is required to be applied online. The appellant submits that on the bonafied belief that he has already made an intimation in Form VAT 250. He started following procedure laid down under the Rules referred to the Composition Scheme of payment of VAT. The appellant has not claimed any ITC in the monthly VAT returns. The appellant has not claimed any deduction on account of supply of services which are eligible or claiming deduction. While filing the monthly VAT returns the appellant has rightly paid tax at the rate of 1.25% at the time of registration of the Villa and filed monthly returns accordingly. The appellant therefore submits that the intention of the appellant in the present case is to pay tax under Composition Scheme. In view of the above decision of the CESTAT Tribunal and intention of the appellant in discharging the VAT liability the appellant submits that the Assessing Authority is not justified in not allowing the benefit of composition rate of tax.

- j) In view of the above grounds and other grounds that may be urged at the time of hearing the appellant prays the Hon'ble VAT Appellate Tribunal to set aside the impugned order and allow the appeal.

*

Signed) Appellant(s)

(Signed) Authorised representative, if any

VERIFICATION

I, _____ the appellant(s) do hereby declare
that what is stated above is true to the best of my / our knowledge and belief.

Verified today the ____ day of April'2019

*

Signed) Appellant(s)

(Signed) Authorised representative, if any